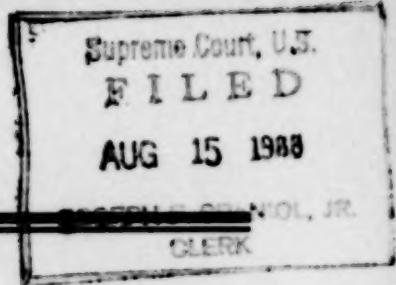


No. 87-6026 (4)



In THE
Supreme Court of the United States
OCTOBER TERM, 1988

HEATH A. WILKINS,

Petitioner,

v.

MISSOURI,

Respondent.

On Writ of Certiorari to the Supreme Court of Missouri

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 8, 1987
CERTIORARI GRANTED JUNE 30, 1988

110 GP

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RELEVANT DOCKET ENTRIES

Circuit Court, Clay County, Missouri
Seventh Judicial Circuit

DATE	PROCEEDINGS
8/15/85	Petition filed to allow prosecution of juvenile under general laws. Defendant arraigned.
10/8/85	Information charging first degree murder filed.
10/17/85	Public defender appears with and on behalf of defendant. Defendant arraigned and enters plea of not guilty by reason of mental disease or defect.
4/16/86	Defendant found competent to proceed. Defendant states a desire to proceed pro se and dismiss the services of the public defender.
4/23/86	Public Defender granted leave to withdraw but ordered to remain available throughout the proceedings.
5/9/86	Defendant waives trial by jury, withdraws plea of not guilty by reason of mental disease or defect, and enters a plea of guilty. The Court accepts the guilty plea to first degree murder.
6/27/86	Defendant waives jury trial and right to counsel at sentencing proceeding. The state adduces evidence. The defendant requests the death penalty. The Court, after finding the existence of two aggravating circumstances, sentences defendant to death.

IN THE CIRCUIT COURT
OF CLAY COUNTY, MISSOURI
June Term, A.D. 1985

STATE OF MISSOURI)
) ss.
COUNTY OF CLAY)

No. CR 185-491 FX

THE STATE OF MISSOURI,
 Plaintiff
against
HEATH A. WILKINS,
 Defendant

INFORMATION

James B. Chancellor, (Asst.) Prosecuting Attorney within and for the County of Clay in the State of Missouri, charges that the defendant, in violation of Section 565.020.1, RSMo, committed the Class A felony of murder in the first degree, punishable upon conviction under Section(s) 565.020.2, RSMo, in that on or about July 27, 1985, in the County of Clay, State of Missouri, defendant, after deliberation, knowingly caused the death of Nancy Allen by stabbing her.

Filed October 8, 1985

/s/ James B. Chancellor
(Asst.) Prosecuting Attorney

James B. Chancellor, (Asst.) Prosecuting Attorney of the County of Clay, State of Missouri, being duly sworn,

upon oath says that the facts stated in the above information are true, according to his best information, knowledge and belief.

/s/ James B. Chancellor

Subscribed and sworn to before me, this 8th day of Oct., A.D., 1985.

Jack K. Roberts

By /s/ Pamela Hill

IN THE JUVENILE COURT
OF CLAY COUNTY, MISSOURI

No. Ju 185-132J

IN THE INTEREST OF HEATH ALLEN WILKINS

Male Age: 16

**ORDER DISMISSING PETITION
TO ALLOW PROSECUTION OF
JUVENILE UNDER GENERAL LAW**

Now on this 15th day of August 1985, there being present Mary A. Elmore, Juvenile Officer of Clay County, and Max Von Erdmannsdorff, attorney for the Juvenile Officer, and Heath Allen Wilkins, the juvenile, and Sherry Lynn Wilkins, the juvenile's mother, and Fred Duchardt, attorney for the juvenile, and the Court hearing the motion of the Juvenile Officer to dismiss the petition heretofore filed in the interest of the juvenile, to allow the juvenile to be prosecuted under the general law, and the Court receiving testimony and other evidence upon said motion, and the report of the investigation required by Sections 211.011 to 211.431 R.S.Mo., and being fully advised in the premises, the Court finds:

1. The petition filed in this cause alleges that the juvenile has committed offenses which would be felonies if committed by an adult, to-wit: did, after deliberation, knowingly kill Nancy Allen by repeatedly stabbing her with a knife, did forcibly steal cigarettes, alcoholic beverages, cigarette papers, a lighter, a cash drawer, and U.S. Currency in excess of \$50, in the charge of Nancy Allen, and in the course thereof did use a dangerous instrument against Nancy Allen.

2. The juvenile is 16 years of age, having been born on the 7th day of January 1969, and the alleged offenses were committed after the juvenile became 14 years of age.

3. The juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code for the reasons that the offenses alleged involved viciousness, force and violence and the crime complained of is extremely serious and particularly violent to the extent that it constitutes strong evidence that the person guilty thereof is not a fit subject for rehabilitative facilities of the Juvenile Court. Because of the seriousness and viciousness of the crime alleged, the protection of the public is an element which requires the Court's attention in these proceedings. In light of the facts, it is reasonable to conclude from a practical standpoint that only 17 months of rehabilitative confinement or treatment are available and that based upon the crime and the juvenile's present circumstances, such a period is not adequate to rehabilitate him and to protect society from him. That said juvenile has received the services of the Division of Youth Services and continues to involve himself in other violations of the law and is therefore beyond the rehabilitative care, treatment, and services available to the Court. The said juvenile is an experienced person, and mature in his appearance and habits to the extent that the juvenile forum and rehabilitative machinery are not adequate for his treatment and confinement. The present juvenile system of rehabilitation and confinement lacks sufficient security to deal with a perpetrator who constitutes a threat to society and there are no adequate rehabilitative facilities available to the Juvenile Court should jurisdiction of the above-named juvenile be retained by the Court.

The Court has received into evidence, Exhibit number nine, which is the statement of Heath Allen Wilkins and which the Court finds to have been coherently and voluntarily given after all necessary and appropriate advice

was given concerning the juvenile's legal and Constitutional rights. The Court finds, however, that concerning the relevant issues regarding dismissal of the petition herein to allow prosecution under the general law, there is other substantial and compelling evidence, which causes the Court to sustain the Juvenile Officer's motion. The Court grants leave for the withdrawal of Exhibit nine and the substitution of Exhibit nine A, a duplicate in its place.

WHEREFORE, it is ordered that the petition filed in this cause be and the same is hereby dismissed, and that the juvenile may be prosecuted under the general law for the offenses alleged in said petition.

/s/ [Illegible]
Judge of the Juvenile Court

STATE OF MISSOURI
DEPARTMENT OF MENTAL HEALTH

WESTERN MISSOURI MENTAL HEALTH CENTER
Division of Comprehensive Psychiatric Services
Kansas City, Missouri 64108

December 16, 1985

REPORT OF MENTAL EXAMINATION:

Re: Heath A. Wilkins

Date of Birth: 1/7/69

SSN# 492-66-2262

Circuit Court Case# CR185-490FX, CR185-491FX and
CR185-492FX

Western Missouri Mental Health Center Chart #70668-2

Date of Examination: 11/27/85

SOURCE OF INFORMATION:

The information obtained for this report comes from:

1. Referral data from the Seventh Judicial Circuit Court, Clay County, Missouri.
2. Clay County Sheriff's Department Investigation Report and related reports (#85-2311) pertaining to the alleged offenses.
3. Evaluation and treatment records from: Crittenton Center, Kansas City, Missouri; Tri-County Community Mental Health Center, North Kansas City, Missouri; Butterfield Youth Services, Inc., Marshall, Missouri; and, Western Missouri Mental Health Center, Kansas City, Missouri.
4. Evaluation and Progress Reports from the State of Missouri, Division of Family Services and the Clay County, Missouri Juvenile Court.

5. Psychiatric Social Work Report completed at Western Missouri Mental Health Center specifically for this evaluation.
6. Personal interview, mental status examination and psychological assessment of the defendant conducted on the date listed above.

IDENTIFYING INFORMATION:

The defendant, Heath A. Wilkins, is a 16 year old, Caucasian male referred to Western Missouri Mental Health Center for a mental examination pursuant to the provisions of Chapter 552, R.S.Mo., by the Honorable Glennon E. McFarland, Judge of the Circuit Court of Clay County, Missouri, Division 1. The defendant is charged with Murder—1st Degree, Armed Criminal Action, and Unlawful Use of a Weapon.

According to the information contained in Police Investigations files, the defendant is alleged to have fatally stabbed a female storekeeper of a retail liquor/delicatessen shop during an apparent robbery. The incident reportedly occurred during the late evening hours of 7/27/85, in the vicinity of 2600 Block of North Bell, Avondale, Missouri. The defendant was apprehended apparently without incident on 8/10/85. The defendant was certified as an adult subsequent to Chapter 211., R.S.Mo., on 8/15/85 by order of the Juvenile Court of Clay County, Missouri.

RELEVANT HISTORY:

The defendant was born 1/7/69 in Little Rock, Arkansas and is the second of two siblings. He was reared primarily by his mother and other family members until approximately age 10. At that time he began a series of ongoing placements outside of the parental home, which consisted of residential facilities and correctional centers under the supervision of The Juvenile Court.

Adjustment was apparently marginal and his behavior within these settings is generally characterized by both behavioral and academic difficulties. Psychiatric/psychological diagnoses are consistently reported as "Personality" and "Conduct" Disorders, the essential features of which include repetitive patterns of "undersocialized" and "antisocial" behavior. Evaluation/treatment records list no psychotic, organic or cognitive/intellectual impairments. The defendant presents no current major medical/physical concerns and is on no program of prescribed medication. There is no history of major illness, injury, medical-surgical difficulties, allergy, seizure disorder or traumatic head injury. The defendant reports a significant history of alcohol/illicit drug use beginning in early adolescence. Although he admits to abuse of a variety of substances, he reports preferential (and fairly regular) use of psychedelics and hallucinogens, primarily marijuana and LSD.

EXAMINATION AND MENTAL STATUS:

The defendant presented as an adequately developed and nourished, Caucasian male who appeared approximately his stated age. No gross physical abnormalities or disturbance in motor activity were noted and he appeared to be in no acute physical or emotional distress. Level of hygiene/grooming was appropriate. The defendant's overall manner of presentation and general interview behavior may best be described as alert and cooperative. He spoke freely, answering all questions appropriately, and a rapport adequate for the purposes of this examination was easily established.

Throughout the examination interview, the defendant was logical and coherent and there were no signs of cognitive disorganization or loss of reality contact. He experienced no difficulty engaging in normal conversation, comprehending and responding to direct questions/instructions, or engaging in the interview process. The defendant was fully oriented to time, place and person and aware of his

situation and surroundings. Thought processes were well organized/focused and thought content was goal directed and reality based. There was no evidence of distractability, tangentiality, cognitive delay or idiosyncratic behavior. No hallucinations, delusions or other florid psychotic symptoms were elicited. The defendant himself denies having any such experiences either presently or at anytime in the past other than those associated with drug (i.e. hallucinogen) usage.

Within the examination interview, the defendant exhibited an appropriate range and intensity of affective responses. He interacted in a relaxed and spontaneous fashion and mood, facial features and physical gestures were congruent with the presented topic of conversation. There were no indications of suicidal ideation aggressive preoccupation or uncontrolled/unmanageable behavior and nothing to suggest the presence of major affective disturbance. The defendant was appropriately serious when discussing his current legal situation but showed no overt signs of anxiety or dysphoria over the possibility of criminal incarceration.

Results of formal personality assessment, utilized in the Minnesota Multiphasic Personality Inventory (MMPI), were generally consistent with the defendant's mental status, clinical presentation and reported history. Individuals who produce similar MMPI profile patterns tend to be somewhat defensive and non-conforming and frequently present a history of underachievement, marginal adjustment and drug related difficulties (particularly involving hallucinogens).

The defendant's overall level of intellectual functioning is judged to be within the average range. Attention/vigilance, memory for both recent and remote events, and the ability to encode new information were without deficit. The defendant was verbally fluent and demonstrated well developed verbal/communication skills. He experienced no difficulty comprehending and responding to complex verbal interactions or expressing

himself in a logical, coherent and intelligible fashion. He possesses fully functional literacy skills and demonstrated appropriate comprehension of moderately complex printed material. Basic arithmetic skills were similarly adequately developed. Higher order processes appeared to be within the approximate normal range and with no specific deficit. Judgement, reasoning, problem solving strategy and sense of responsibility were, by clinical test, without deficiency. Pertaining specifically to his current situation the defendant was able to present and discuss his legal status, as well as the events and circumstances surrounding his arrest, in a logical and intelligible fashion.

In summary, the results of this examination indicate that the defendant is an individual of average intellectual capacity who demonstrates no gross deficits in terms of his overall mental status and no symptoms of mental disease or defect within the meaning of Chapter 552, R.S.Mo.

COMPETENCY TO STAND TRIAL:

The defendant is aware of his situation with the Court and possesses a functional understanding of the nature, object and participants of criminal court proceedings. He is aware of the charges as they are brought against him and the nature and range of possible penalties which may be involved should he be found guilty.

The defendant reports being familiar and comfortable with his appointed attorney whom he identified as Mr. Fred "Duchardt." He should be able to establish and maintain an appropriate relationship with legal counsel, as he was able to do so with this examiner. Based on the results of the current mental status examination, there is nothing to suggest that the defendant would experience difficulty attending to, and participating in court procedures, understanding basic legal rights, decisions and options, interpreting witnesses' testimony, or testifying

in his own behalf. There are no clinical indications to suggest that the defendant would be likely to decompensate during trial proceedings or while awaiting to stand trial. He appears fairly well adjusted in his present setting and does not report or demonstrate any notable symptoms of psychotic or affective disturbance or other similar conditions.

In summary, it is the opinion of the examiner that the defendant at the present time possesses sufficient capacity to understand the proceedings against him, meaningfully assist legal counsel, and cooperate with the Court in his own best interest.

RESPONSIBILITY AT THE TIME OF THE ALLEGED OFFENSE:

The defendant admitted his involvement in the alleged criminal offense. His account of the incident as presented to this examiner was essentially similar to the information contained in police investigation files. Memory appears intact for the time period surrounding the alleged offense and the defendant was able to offer a detailed, logical and coherent account of his behavior at that time. He reports having experienced no unusual thoughts, feelings or compulsions and indicated that he was functioning under no particular stress/pressure or duress.

The defendant did admit to moderately heavy recreational use of both alcohol and a variety of illicit drugs (primarily hallucinogens) throughout the time period surrounding the alleged offense. He reported frequent use of marijuana and "acid" (i.e. LSD, a synthetic psychedelic/hallucinogen). Although the defendant indicated that he was "high" at the time of the alleged offense, subsequent to ingesting LSD approximately "four hours before", he did not report having experienced any distortions, hallucinations or other perceptual changes, or any confusion or similar intellectual/cognitive impair-

ments at the time of the alleged offense. Based on the defendant's subjective report, he had performed/participated in a variety of intentional and goal directed activities throughout the time period in question. In addition, the information contained police investigation files (including statements from the defendant himself, and associates/friends and others who had been with the defendant throughout the time period in question) offers no indication of any grossly disorganized, bizarre or uncontrolled/unmanageable behavior on the part of the defendant/suspect at any time surrounding the alleged offense.

Based on the information collected in the course of this examination, it is the opinion of the examiner, that at the time of the alleged criminal conduct the defendant was not suffering from mental disease or defect within the meaning of Chapter 552, R.S.Mo. There is nothing to suggest that the defendant would have been incapable of: a) goal directed, purposeful behavior; b) knowledge and appreciation of the nature, quality or wrongfulness of such alleged criminal actions or; c) the capacity to conform his conduct to the requirements of the law.

RESPONSE TO COURT ORDERED ITEMS:

As requested by the Court Order, the following is offered:

1. In the opinion of the examiner, the accused does not suffer from mental disease or defect by which he lacks the capacity to understand the proceedings against him or assist in his own defense.
2. It is not recommended that the accused should be held in custody in a suitable hospital facility for treatment pending determination by the Court of the issue of mental fitness to proceed.
3. It is not recommended that the accused, if found by the Court mentally fit to proceed, should be detained in such hospital facility pending further proceedings.

4. In the opinion of the examiner, the accused does not suffer from mental disease or defect within the meaning of Chapter 552, R.S.Mo.
5. In the opinion of the examiner, at the time of the alleged criminal conduct the accused did not suffer from mental disease or defect within the meaning of Chapter 552, R.S.Mo., which would have rendered him incapable of knowing or appreciating the nature, quality or wrongfulness of his conduct or would have rendered him incapable of conforming his conduct to the requirements of the law.

Respectfully Submitted,

/s/ Steven A. Mandracchia, Ph.D.
 STEVEN A. MANDRACCHIA, Ph.D.
 Department of Forensic Psychiatry
 Western Missouri
 Mental Health Center

SAM/bm

THE MENNINGER CLINIC
 TOPEKA KANSAS

Psychological Test Report

Patient's Name WILKINS, Heath Age 17
 Reg. No. 0-132811
 Examiner Melvin Berg, Ph.D./cr
 Date 4/8/86

TESTS ADMINISTERED:

WAIS-R, Animal Choice Test, TAT, and Rorschach

INTRODUCTION:

This young man was accused of murder in the course of a robbery to which he is planning to plead guilty. He has puzzled his attorney with his disinterest in defending himself and his readiness to accept the death penalty. The patient's alleged involvement in this crime appears to be the end result of a long history of serious anti-social maladjustment throughout his childhood which resulted in a series of placements in psychiatric settings due to his incorrigibility and threats of violence at home.

This testing is part of an evaluation requested by the defendant's attorney who has been concerned and puzzled by the defendant's disinterest in mounting a legal defense as well as his acceptance of a possible death penalty. Moreover, the patient has given evidence of rather morbid preoccupations regarding death expressed in poems which have come into the attorney's hands. This passivity in the face of a possible death penalty, along with his morbid preoccupations, has caused the attorney to wonder about possible mitigating psychological circumstances which may

have contributed toward the alleged criminal act and may also have bearing upon his competency to stand trial. This testing aims at clarifying the nature of the defendant's psychological functioning, the extent of disorganization to which he may be vulnerable, and psychological factors which could have contributed to the defendant's alleged criminal act and his attitude toward the charges against him.

INTELLECTUAL FUNCTIONING:

The patient is functioning within the Average Range of Intelligence (Verbal IQ, 95; Performance IQ, 124; Full Scale IQ, 105) and shows a pattern of abilities and deficits suggestive of an impulsive cognitive style which avoids careful reflection in favor of immediate action. First, he demonstrates a disinterest or inability to sustain logical and stepwise problem-solving efforts in situations calling for careful and deliberative thought. As though he refuses to summon the required energy, he in a cavalier manner devalues the constrictions of well considered reasoning. His thinking impulsively darts toward glib and facile solutions as he avoids channeling effort into a deliberative or process systematic thought. This capricious and haphazard approach is exemplified by his attempted solution of an arithmetic problem during which he simply chose to guess and estimate rather than work out the problem mathematically, explaining, "I don't know (how I arrived at the answer). I just picked a number. I estimated it. . . . I don't figure it. I just know it. I figure on paper and know in my head." At other times he resorts to a most arbitrary basis for problem solution, that is the association of ideas on the basis of rhyme. So when asked to explain Marie Curie's achievement he said "for inventing Mercury" or define plagiarize he explained "the act of getting pleasure."

His readiness to leap toward impulsive easy solutions is also demonstrated in the quality of his judgment con-

cerning more complex and ambiguous problems regarding social mores and the manner in which people typically manage and conform to the customs of our society. His ability to apply common sense is moderately impaired as a result of his failure to exercise a more searching and well considered method. Thus, he becomes prone to hasty judgements, based upon a global and vague attempt to understand the world around him. For example, in response to a question regarding why people should pay taxes he said, "for the government. (Say more) I'd just say the economy." This cognitive approach to problems and style of understanding the environment reflects an inaccurate, vague, and mildly distorted understanding of social conventions and the rationale for how and why social mores and customs are established.

In addition, this impulsive style of thought also contributes a concrete focus upon the superficial aspects of a situation or an idea since he is simply not accustomed to adopting a deliberative cognitive analysis. It is likely that higher levels of abstraction and integration are not beyond his intellectual potential but are obstructed by his impulsive proclivities which simply chose to bypass a more sustained meticulous approach. The judgemental difficulties described here are not of sufficient magnitude as to interfere with his ability to comply with and contribute toward his legal defense nor can they be construed as a psychotic inability to fail to distinguish between right and wrong or fact and fantasy.

THE CAPACITY FOR ORGANIZED THOUGHT AND ATTUNEMENT TO REALITY:

This young man's arbitrary and impulsive style of thinking can take on more serious implications as the problems he is confronted with become less routine and structured and require greater internal efforts to be able to organize thought and language in a logical manner without reliance upon external guidelines. This is the kind of think-

ing called on to guide people in managing interpersonal relations, making major life choices, or perform under the sway of intense feelings. Here his thinking too readily drifts toward an abandonment of rules and language and logic as though he believes that he can at whim flout these conventions. For example, at times he uses words and phrases in an odd and idiosyncratic manner as when he described a slender individual as being "demusclar" or referred to Martin Luther King as a "freedom mover," meaning a "freedom fighter." His sporadic use of words which he coins himself is indicative of a vulnerability to entertain personalized ideas which are out of tune with reality when the guidelines for understanding reality are not clearly apparent.

Moreover, his thinking can become muddled and fluid as he too swiftly moves from one idea to another and attempts to combine them in a manner which winds up as a hodge podge of odd notions and beliefs. Particularly when stirred by feelings, his thinking becomes temporarily disorganized and permeated by highly personalized fantasies which temporarily push him toward the outer limits of what is commonly accepted as reality and good sense. When depressive or angry affects are aroused, his thinking deteriorates, becomes diffuse, and so dominated by feeling that his thoughts then function more as a form of emotional discharge than as a rational means of understanding reality and coming to grips with problems.

Thus, when asked to tell a story about a picture of a man who is standing in a cemetery he said,

"It's dry . . . its like its barren. Its like it's crowded and goes on forever . . . There is no need of anything like for water . . . you get thirsty but you don't dry out . . . There's no light but you don't need to see anything because you know where everything is at . . . He's not dead because he was never

alive. I guess it would feel or represent waiting . . . for nothing. It's not waiting for nothing . . . An example would be you can't see a shadow, you can only see the absence of . . . it's a real gruesome picture."

Under the sway of intense feelings, such as the depressive sense of emptiness and isolation exemplified above, his thinking becomes subject to illogical reasoning, and his ties to reality are strained by odd ideas and perceptions of the environment and people which are vulnerable to distortion. At such times, the examiner speculates that he and the environment take on a quality of being strange, unreal, and redolent with peculiar and uncanny feelings like that which most people experience only in nightmares.

HOW FEELINGS ARE MANAGED:

This young man is typically able to present himself, and indeed experience himself, as being as cool as a cucumber, so that during the testing, as has apparently been the case in other clinical interviews, he is able to comply, cooperate, and readily adjust to the demands of the situation. This calm exterior, however, is only a minor and superficial aspect of his functioning in that he has learned to deny, and minimize feelings in order to keep their disturbing impact at a safe distance. He is typically unaware of and out of tune with emotional stirrings which rumble within him and then find a sudden, intense, and eruptive discharge sweeping him along like a feather in a hurricane. Despite his efforts to keep himself free of feelings, his defenses readily fall, as he is easily overwhelmed by intense affects which are confusing to him, resist his efforts at understanding and verbalization and take on an uncontrollable force. Subsequently, he can be consumed by a deadening depression which leaves him feeling thoroughly hopeless in a world which seems devoid of life or meaning. More ominously, anger can reach

explosive intensity and seek discharge through sudden spasms of destructive action as suggested by his inkblot images of exploding objects such as a missile, volcano, or an oil tanker. It is likely that his rage and morbid despair combine, shade into, and trigger each other, and when overcome by these feelings, his thinking is immobilized and a pawn of his uncontrolled affects. Subsequently, it is difficult for him to tolerate affect, whether it be anxiety, depression, or anger, as his ability to modulate feelings suddenly evaporates. His chilly and blank denial of feeling is thus a precarious defense against such losses of emotional control.

HOW HE EXPERIENCES HIMSELF AND OTHER PEOPLE:

This young man has over the years become practiced at experiencing himself as free of feelings, and as a result winds up feeling "bored" and empty. He is cautious about allowing other people to know him and subsequently is apt to be suspicious when they try to peer beyond his evasions, for he has little trust in others from whom he expects primarily indifference or destructive attack. His attitude toward others is frequently that of icy indifference or omnipotent rage and protest that he must in anyway compromise or suffer frustration as a result of their own needs. He aspires to be thoroughly free and unfettered by any constraint or limits upon his whim. This attitude leads him to reject and resent authority. Despite his rage and rejection of social obligation and ties to others, he demonstrates an incipient potential for attachment and concern which leaves him vulnerable to feelings of loss and longing.

It may be this small seed of interest and attachment to others which gives rise to his underlying sense of badness which is exemplified by a story he told about a man who painted a picture and did not like the finished product as he "realized this is ugly, this is helpless. It didn't do

anygood. So, he threw it away, threw it in the trash." In another revealing story he told of a man who was hypnotized, tells secrets about himself during the hypnosis, and subsequently loses the friendship of the hypnotist who is repelled by what he learns about the true nature of his friend.

His depression derives primarily from a sense of utter isolation and aloneness that causes him to feel as though he were living in a world barren of life to the extent that he is unsure of his own aliveness and reality. His fantasy life is haunted by images of death, shadows and preoccupations with emptiness. Like somebody who has barely learned to become attached to anything or anybody, others are experienced as mere shadows who are unreal and not quite alive. The environment is devoid of anything to which he could warm up to and feel the rewards of a relationship. He is left with an excruciating sense of emptiness, deadness, and longing for *something* to fill up the barren place in his life, although he does not know what that might be. Just as he has tried to deny his rage, he likewise tries to seal off this depressive experience which intermittently breaks through his defenses and is expressed in poetry or profoundly disturbing emotional states leading him to dwell on death and morbid themes.

Obviously, this young man is exquisitely vulnerable as he tries to contain rage, and feelings of complete isolation. In order to alleviate his anguish and alienation, he is likely to turn toward gratifications which provide temporary relief from despair. Thus, he is apt to take pleasure by indulging himself in stimulating activities and thrill inducing sensations which provide immediate gratification and distraction from the torment of his inner world. When these indulgences fail death may loom as a welcome escape and perhaps an insignificant loss since he feels not quite alive.

DIAGNOSTIC UNDERSTANDING AND SUMMARY:

The psychological picture of this youngster is most consistent with that of Conduct Disorder, Undersocialized and Aggressive Type. His capacity to manage and control affect is tenuous and inconsistent, leaving him a subject to impulsive actions as well as arbitrary and capricious thinking which is prone to skirt over details, and considerations for logical systematic thought. He is intolerant of intense affects such as anxiety, depression, or anger, in that such feelings are overwhelming, interfere with his ability to think clearly, and gives rise to impulsive action. He is vulnerable to massive infusions of intense rage which lead to spasms of destructive action. His rage co-mingles with a profound depressive experience generated by an excruciating sense of lonely alienation whereby he experiences both himself and other people as being lifeless and empty. He then becomes swamped by morbid concerns regarding death which outstrip his ability to think clearly as he is gripped by disturbing mixtures of rage, depression, and aloneness temporarily straining his ability to think clearly and judge reality accurately.

He barely experiences ties to others or emphatic attunement as though he has experienced few occasions when he felt intimately involved with another person whose being he could understand, and value. His notion of himself in relation to others is that of a shadow living amongst shadows whereby his inner life and that of others is felt as insubstantial except for anguish and anger. He protects himself from this morbid and confusing inner world by attempting to deny and minimize his feelings which nevertheless squeeze through in the form of surges of intense feeling states which can give way to impulsive behavior. These defensive efforts to wash out his feelings leave him feeling bored and disconnected from his environment, which then gives rise to his restless search for excitement, pleasure and omnipotent domination of the environment.

LEGAL IMPLICATIONS:

Despite the massive impairments in this youngster's developments which have contributed toward his inadequate impulse controls, vulnerability to muddled though, intense rage, and experience of others as not being real, he cannot be regarded as suffering from a psychotic condition which grossly impairs his attunement with reality. Certainly it is possible that in the heat of intense feeling states his capacity to think clearly, control his impulses, and evaluate reality can become temporarily weakened.

With regard to his ability to aid in his own defense, he possess adequate cognitive skills to be able to collaborate with an attorney and understand the legal circumstances facing him. His reported disinterest in waging a legal defense may result from his hopeless view of his life which already feels barren and worthless, so the prospect of living in prison without the stimuli to distract him from his inner torment may seem unbearable.

TREATMENT IMPLICATIONS:

It is difficult to assess this young man's treatability for even though he exhibits an extreme indifference and alienation from others which limits the extent to which he can be influenced, he harbors incipient longings to establish human contact. It is possible that over the course of a long period of time, he could benefit from an *intensive treatment* process which was conducted in a *highly secure* setting by highly skilled and committed personnel. The primary goal might be to provide a milieu within which he could develop a relationship to another person to whom he could become attached with the aim of cultivating his potential for valuing other people and experiencing concern. The availability of another human being who would become an object of his suspicion, longing, rage, and hopefully guilt could alleviate his sense of isolation and help him integrate his destructive rage with his longing for involvement with others. A potential

treatment risk for him is that of suicide, for should he become more aware of his depressive hopelessness and loneliness, without establishing a supportive bond to a treater, his despair may become unbearable.

His writing and poetry may be a potential medium of communication with treaters, for it appears that he has attempted to use writing as a means of trying to understand his confused inner experience. In addition, his poetry represents a creative act which is offered to others, perhaps as a form of reparation for his sense of badness, and offered in a last vestige of hope that somebody will take the trouble to listen and have the concern to hear what he is trying to say. His poetry seems to be analogous to the current program of telecasting radio messages into outer space in the hope, against all odds, that a distant being will hear, and understand the message. However, given the extent of his alienation, and devaluation of people it remains an open question whether he can allow himself to develop attachments to those who might try to listen.

/s/ Melvin Berg, Ph.D.
MELVIN BERG, PH.D.

Date Signed: 4/9/86

THE MENNINGER FOUNDATION
Diagnostic interview report

Patient's name WILKINS, Heath Reg.# 132 811 Age 17

Name of person(s) interviewed patient
(Specify relationship to patient)

Referred by Frederick Duchardt, Attorney

Dates seen March 20, 1986

Interviewer William Logan, M.D.,/gm

Team members Melvin Berg, Ph.D.

Problems and issues Diagnosis and evaluation of competency and criminal responsibility
Diagnosis

			Principal diagnosis (check one)
Axis I	312.00	Conduct Disorder, undersocialized	<input checked="" type="checkbox"/>
	305.31	Hallucinogen Abuse Aggressive	<input type="checkbox"/>
	305.21	Cannibus Abuse	<input type="checkbox"/>
Axis II	301.83	Borderline Personality Disorder	<input type="checkbox"/>
	301.22	Schizotypal Personality Disorder	<input type="checkbox"/>

Axis III

Current medications

Physical exam (is) (is not) required at this time.

Axis IV

Axis V

Recommendations and initial treatment plan upon completion of diagnostic study:

	TMF	Elsewhere
Intensive outpatient evaluation	<input type="checkbox"/>	<input type="checkbox"/>
Inpatient treatment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Day hospital treatment	<input type="checkbox"/>	<input type="checkbox"/>
Psychoanalysis	<input type="checkbox"/>	<input type="checkbox"/>
Individual psychotherapy	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Group psychotherapy	<input type="checkbox"/>	<input type="checkbox"/>
Family therapy	<input type="checkbox"/>	<input type="checkbox"/>
Psychological testing	<input type="checkbox"/>	<input type="checkbox"/>
Marital therapy	<input type="checkbox"/>	<input type="checkbox"/>
Counseling	<input type="checkbox"/>	<input type="checkbox"/>
Casework	<input type="checkbox"/>	<input type="checkbox"/>
Extended consult	<input type="checkbox"/>	<input type="checkbox"/>
Brief psychotherapy	<input type="checkbox"/>	<input type="checkbox"/>
Pharmacotherapy	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify)	<input type="checkbox"/>	<input type="checkbox"/>

Estimated time frame for treatment 3 years plus

Additional data (Use second page)

INTRODUCTION

The patient is a 17-year-old (d.o.b. 1/7/69), Caucasian student who is charged with first-degree murder, armed criminal action, and unlawful use of weapon in the Circuit Court of Clay County, Missouri. The incident occurred during the late evening hours of 7/27/85 when a female clerk of a liquor-delicatessen shop was fatally stabbed during the course of a robbery. The patient was referred for psychiatric evaluation by his attorney, Fred Duchardt, of the Clay County Public Defender's office. The referral question concerned the patient's mental state at the time of the offense.

DESCRIPTION OF EVALUATION

The patient was interviewed for 5 hours on 3/20/86 in the Clay County Adult Detention Facility. The evaluation focused on the patient's past history, current mental state, and state of mind at the time of the offense. Psychological testing including the WAIS-R, animal choice test, TAT, and Rorschach were administered on 3/22/86 by Melvin Berg., Ph.D., a clinical psychologist.

Background material available for review included the following:

1. Evaluation of the Tri-County Mental Health Center and Western Missouri Mental Health Center during August and September 1979.
2. Records from the Butterfield Youth Services including the admissions summary, reports to the juvenile court, treatment reviews, progress reports, psychological testing, school records, psychiatric evaluations, and discharge summary covering the period from 2/1/80 until 5/20/83.
3. Reports from the Crittenton Center in Kansas City, Missouri, including the discharge summary, psychiatric evaluation, psychological testing, and school records covering a period from 5/28/83 until 11/17/83.

4. The psychiatric evaluation of the Western Missouri Mental Health Center dated 12/16/85.
5. The investigation reports on the current offense.

PAST HISTORY

The patient is the younger of two sons born in an intact home in Little Rock, Arkansas. The patient does not remember his father as his parents divorced when he was approximately age 4. His mother worked in a beauty salon and following the divorce took her two sons to live in Liberty, Mo., where the patient participated in a head-start program at age 5. At age 6, the family relocated to Kansas City where he attended Gracemore Grade School. The patient related he was good in his studies and passed all of his courses without doing any work except for the tests. He reported, "I have a hard time with the grind." He admitted he often fought with other students and even organized fights with bunches of people. He indicated he learned about peer pressure when he was little and although he was not popular he had friends. He reported he was shy.

When asked about his parents' divorce, the patient reported, "I grew up with my mother's story." Primarily this was that the father left her and never contacted the family to help them. Consequently the family was poor.

The patient stated his mother was mean if he did something wrong. Often during his childhood he would stay away from the house with friends. When he returned, his mother would beat him and put him in a room. He claimed this stopped his behavior for a short time but he soon ran away again. He believed he was his mother's favorite but took the blame for everything. Often he claimed his mother's beatings would last for up to 2 hours. He had no contact with his father. By age 7 he was robbing houses primarily for knives and money. He reported that he loved fires and would often go to the

woods to build them. At age 8 he reported he tried to burn down houses and on one occasion a whole apartment complex. He would do this by tacking a cloth to the ceiling, lighting it and running. The patient's mother worked at night and slept during the day. A neighbor baby-sat during the day but the children were left alone at night. The baby-sitter smoked pot and often had friends over. His mother would often question him about the baby-sitter's behavior. At age 9, the patient, his brother, and one other child ran away to a nearby barn. His mother became concerned and contacted the police, who searched for him with a helicopter. He was not arrested at this point but merely sent back home with his mother.

The patient's closest relationship seemed to be his maternal uncle with whom he would stay during the summer. Often his mother, her boyfriend, and his brother would visit the uncle. The patient reported he had been stoned with his uncle since kindergarten. He claimed his mother and uncle joked about this. He claimed the uncle taught him how to shoot guns and owned an AR-15 semi-automatic. The patient would often shoot at passenger cars for target practice.

The patient particularly did not like his mother's boyfriend who had a quick temper and would often slap him for small things such as walking in front of him while he was watching the TV. He recalled a plot to poison the mother so she would get sick and break up with the boyfriend. The plot concerned putting poison in Tylenol capsules. He stole the plant poison from a nearby nursery. He later sprinkled some of the poison on some ham which he fed to a neighborhood dog which died soon thereafter. The patient recalled being very angry and that he hated both his mother and the boyfriend. He never questioned what he was doing as "I never thought about any of my actions." Frequently during his youth he shoplifted and broke into people's houses. On several

occasions he was apprehended by the residents, but would tell them "I'm lost." He claimed they were gullible and it worked every time. He also poisoned different animals and pets around the block. On one occasion he stole \$5 in pennies, grabbed the dog that had been chasing him and forced the pennies in a bag down the dog's throat.

The patient recalled being evaluated at Tri-County Mental Health Center and Western Missouri Mental Center at approximately age 10. He estimated he stayed there 6 months but felt out of place as most of the children were older. He was then sent to Butterfield Youth Home. He was eventually put on East Ranch, a residential facility for 8 boys. He claimed the primary activity was doing farm chores. He missed 4th and 5th grades completely but passed the final examinations anyway and never made the grades up. At the youth home, the patient engaged in significant drug usage. He would grow his own pot and consume it. However he also abused inhalants, specifically including a substance he called "rush" which was a locker deodorant, and gasoline. He additionally stole LSD from another resident. This caused him to see colors, see things moving, and to hear his name called constantly. He denied consuming significant amounts of alcohol. On one occasion he drank rum straight but had to wash out the taste. He claimed the only drink he liked was gin and tonic. Because of his drug usage he was kicked out of the 8th grade and had then had a private tutor. He liked one counselor with whom he had therapy but it made little effect on his behavior.

The patient ran away from the youth home on many occasions but each time came back on his own. He additionally set fires. On one occasion he poured gasoline in the toilet, lit it, then flushed it. He was disciplined following the subsequent explosion. His favorite activity was to sneak out at night and sit on the roof, smoke

cigarettes, look at the stars, and talk to a friend. The patient had his first sexual encounter at age 13. However, he stated his mother's baby-sitter had also manipulated him sexually. He seemed angry that the teachers at Butterfield considered him dumb just because he did not know things. Frequently he would be placed in the "slow class" but could not stand the tedious explanations. When the patient became depressed he would dance with a net over his head. On one occasion he cut his wrist at Butterfield and claimed he had frequent thoughts of suicide. Prior to going to Butterfield he had jumped off a bridge but the car swerved before he was hit. He described in vivid detail he had imagined that the impact would break his legs, throw him over the hood, the windshield, and then onto the pavement. Other suicide attempts at Butterfield included an attempt to overdose with alcohol and drugs, and another time on antipsychotic medication, Mellaril, he had been prescribed. He claimed he was placed on Mellaril because he was "too active." The patient never participated in sports or other recreational activities with the other residents because he hated the heat. Instead, he would love to go out at night when it was dark and cool. In all, the patient stayed at Butterfield Youth Home for three and one-half years between the ages of 10 and 13½. After he finished the 8th grade he maintained he would not stay and was subsequently transferred to the Crittenton Center which was closer to his mother.

The patient recalled he was "kicked out" at Crittenton after 4-5 months. The court gave him permission to go home on probation. The only significant event during this period was the beginning of a steady relationship with a girl friend he met there. One reason he wanted to return home was that his mother never married her former boyfriend, Dave. Instead, she was now going with a boyfriend named George whom the patient described as "cool." After he returned home he would often

stay out all night and began drinking gin straight. He attended the 9th grade at Winatonka but would regularly become stoned before going to school. His brother was not at home at that point as he had been sent away for treatment. On at least one occasion he was busted for drugs at school. Eventually he began breaking into houses stealing money, jewelry, and knives. In addition, he would take guns, but usually lost the guns and knives. He would sell his wares to obtain money to spend at the arcade. On one occasion he ran away to southern California. He financed the trip by taking \$800. In New Mexico he stayed briefly with his former baby-sitter. In California he was introduced to speed. After he spent all of his money he called his mother to tell her where he was. His mother wired a ticket for him to return home.

Soon after his return, a friend was caught with a knife he had stolen from a house burglary. The patient was blamed and sent to the Detention Center in Mexico, Missouri. He seemed to enjoy this experience as the inmates were able to watch TV, play pool, and use the video machines. There was no school and the food was good. At age 15 he was sent to the Northwest Regional Youth Services in Kansas City. He made rapid progress through the Youth Services describing their rules as a "game." He continued, "mental health counselors are all the same, the mental machines of society." He gave illustrations of the jargon they would use and became adept at saying the right thing. At the Youth Services they tried to give him Thorazine which he refused because that was the medicine his brother always took. The only time he agreed to take the Thorazine is when he was stoned. However his marijuana usage did decrease at the Youth Center and he attended school regularly. The patient did not like this experience as there was no privacy. He did fairly well in school and claimed that he often taught others how to read and spell.

The patient was next placed in a foster home. He described that his foster parents were Christians who tried to convert him. He believed they were odd because the foster parents thought they could talk to God. The patient ran away from the foster home to live in the basement of the home of a friend who was a tree trimmer. The patient worked with his friend for 2 months. His probation was not violated as he offered to go to the Job Corps. However, the patient admitted he did so with the express purpose of getting the juvenile justice system off his back. He did go to Clearfield, Utah, but attended Job Corps for only a week before he quit. He then returned to the Kansas City area where he began living on his own. He had no further contact with juvenile probation officers from that point on.

Beginning in May 1985, he lived on the streets frequently sleeping in a statue of a large animal at Penguin Park. He began dating a young girl he had first met at the Northwest Regional Youth Service. Initially he actively looked for jobs using his mother's phone number. He since learned that some of the employers had tried to contact him but his mother had not relayed the calls. For a time the patient was involved in stealing material he subsequently sold to a fence for profit. Often he would stay several days with friends. He admitted becoming more heavily involved in drug and alcohol abuse. Particularly he liked to do acid, his favorite drug. He did not do cocaine as it was too expensive, and although he used crystal once intravenously he had made himself, he did not like it. He always carried a water gun that was filled with clorox and ammonia and had several knives in his possession. For a time he was also familiar with the use of num-chucks.

PRESENT SITUATION

The patient recalled the day of the offense he was "hanging around" at Antioch Mall and Arcade. With several

friends, he just walked from store-to-store as he had no place to go and "didn't care." He did not think about the future as he lived on a day-to-day basis. He would fence materials for money occasionally but on this day was out of money. He did not use narcotics as he did not want to become dependent on them or develop a habit. His girl friend had come to live with him at Penguin Park. He tried to have her go home but she always found him. He stated his girl friend always believed he would get into trouble but determined to stay with him as long as she could. On one occasion she obtained \$800 and asked him to leave. The two lived in a motel for a month. However the patient related it was not his money and he hated owing people anything or incurring obligations. The preceding month the patient had met several friends. One friend named Bo did not get along with his dad and came to live on the streets. As he did not know his way around, he frequently associated with the patient. Another associate was Bo's friend, "Shades." His girl friend, "Midget", came to live with him for two weeks before the incident. Under the influence of his girl friend for a time, the patient stopped using drugs with the exception of marijuana. The patient indicated that his girl friend had tried to dissuade him from performing the robbery which they had discussed at some point earlier. They were joined at Antioch Shopping Center by their friend, Shades, who had been fired from a cafeteria four weeks earlier but had just come there to pick up his check.

The patient had no idea why he decided to rob the delicatessen-liquor store that day. He claimed this was the first robbery he had done since he had been in Youth Services. He claimed he was not even shoplifting from the stores at the center. For some time prior to the incident, the patient recalled being quite tense. His girl friend had quit offering him money because he became very angry that she tried to press it on him. He recalled

he could not stand to be touched or forced to do anything. On occasion his friends would steal alcohol which they would drink together in the evenings. They often played a game where they would throw a knife at the other's feet. The patient also frequently used homemade LSD which he would call either red dragon or black dragon. The drug made trees look funny, made furniture move, and when he closed his eyes he could imagine anything. He was not able to sleep, eat, or even engage in sex with his girl friend. On occasion he could see the individual molecules of things and even see sound. The drug caused sound to be turned into liquid that would pour through into his head through his ears. That day he had done three hits of black dragon. He found he could write his name but would crack up laughing. He estimated he took his last hit of LSD around 7:30 to 8:00 in the evening. For dinner his friend Bo stole a pizza out of Show Biz, while another friend stole some liquor. By this time the patient recalled he was becoming violent. When Bo tried to talk to his girl friend, he became angry and threatened him with a butterfly knife and pushed him down. His friend Shades told him to cool down and took the knife away from him temporarily as they had a job to do that night.

Shades and his girl friend then walked to a nearby store to catch a taxi to north Kansas City hospital. The store they planned to rob, Linda's Liquors, was nearby. The patient related they had first planned to rob a different store but he changed his mind that day. He was unfamiliar with the woman who died but had met her once while living in the foster home. He recalled he usually went into that store at night because it was easy to shoplift cigarettes. He and Bo later joined the other two friends at the hospital. When questioned by a security guard they said they were there to visit a friend in the emergency room. It was planned that the patient and Bo would perform the actual robbery.

The two approached the liquor store through the woods so they would not be noticed around closing time when there would be few customers. They took with them a handbag containing a change of clothes and a towel. Prior to entering the store, they placed the handbag on a bench outside. They used the towel to wipe their feet so they would not make tracks when they entered the store. Both walked in and looked for food. The clerk was sitting on a stool behind the counter. The patient laid a \$5 bill on top of the deli and asked for a sandwich. This was to distract the attention of the clerk. His friend went to use the bathroom behind the counter where he put on gloves. When his friend came out of the bathroom he stepped behind the counter and grabbed the clerk. The patient then came around behind the counter and stabbed the clerk in the kidney. His friend then checked for any witnesses and briefly went outside to obtain the bag on the bench. The patient recalled that he stabbed the lady because she was there. He also wanted to stab her before she had a chance to look at him. The weapon he used was a butterfly knife. At the point he stabbed her he claimed he became a machine. He knew what to do to kill her and did not want to worry about any witnesses. He used the example that if a trash can was in the way, one had the choice of knocking it out of the way or walking around it. However if one walked around it, it would be in the way in the future. He recalled that he had told the police after his arrest he had stabbed her because she made fun of him. He maintained at that time he was trying to "play crazy" and pretend he "really freaked and lost it." However, he continued, "I've had enough of hospitals, I don't want to play crazy."

After he stabbed the woman she slumped to the ground. She did not struggle. She placed her hands over her eyes and rolled back on her side. Bo went to the cash register and asked which button to push. Bo had for-

gotten his gloves and therefore put his shirt over his hands so he would not leave prints. The patient instructed him how to take the case out of the cash register and to drop it in the bag. Bo then placed a number of packages of rolling papers in the bag and grabbed her lighter and cigarettes. He headed toward her purse but the patient instructed him not to take that. Bo then grabbed a bottle of liquor, peach schnopps, the girl friend had asked him to obtain. While looking over the liquor counter, Bo asked the clerk where to find something. The clerk was still conscious and told him. In less than a minute Bo had finished this and said he was ready to go.

The clerk began to cry and said, "Oh, no, don't kill me." The patient recalled saying, "Quiet." The clerk shut-up and "I killed her." He recalled he stabbed her several times, it caused no pain and came automatically.

Specifically, he stabbed her in the throat on 3 or 4 occasions and stabbed her in the heart. The patient described that it was almost "instant anger." He saw his actions as stupid but was "consumed." He realized his actions did not make sense and could think of no plausible reason for his action when questioned why it was necessary to kill the woman.

The patient recalled feeling "nothing at the time." Later, he read the woman had children and has regretted his actions.

Following the incident, he and Bo returned to the hospital where they met their two friends. The girl friend asked if everything was alright and he replied that everything went as it was supposed to. The two groups called two different taxi cabs and met at the bus station. The patient claimed that he had obtained approximately \$100. At the bus station they split the money. He and his girl friend received \$75 while Bo and Shades received \$25. He denied that he received \$800 as had been claimed was missing from the store by the owner. Fol-

lowing changing clothes and dividing the money, Bo and Shades left with the plan of later rendezvousing at a lake near Penguin Park. The patient and his girl friend remained at the bus station for an hour playing video games and drinking a coke. The patient and his girl friend met the other two at the lake approximately an hour later. He claimed that his friend Bo began to brag how the robbery had "gone down." The group eventually slept in the park that evening.

When the patient awoke the next morning he was angry that his girl friend had gone with Shades to obtain doughnuts. He stayed at the lake all that day and smoked marijuana but used no more acid. It was Sunday night before he realized what he had done. He wanted to be alone. He eventually spent the money he obtained on drugs. His girl friend tried to ask him about the robbery but he did not want to talk about it.

During the next week, he "figured" they would be caught when his friend Bo began bragging about the incident to friends. Although the girl-friend pressured him to leave he decided not to. He continued, "It didn't matter anymore, I didn't care." There was nowhere to run and he had no money. He decided just to get "wasted." He told his girl friend to go home and "stayed stoned."

The patient was arrested approximately two weeks later. They were at the lake at the time. He claimed when the cops came "I didn't give a shit." He merely told them what happened. He recalled he was told he had the right to remain silent that anything he said could be used against him and that he had the right to an attorney. While he was aware of this it seemed to matter little to him. All he said when he was arrested was "I love you" to his girl friend. He had thought about crying but was silent because he realized there was no one to help him. He realized at the time of his arrest he would probably never be able to hold his girl friend again. He felt it

was Bo's fault they had been arrested because he had bragged about the incident.

REVIEW OF PRIOR RECORDS

Past records from the Tri-County Mental Health Center reflect he was referred by his mother under pressure from the juvenile court at age 10 in August 1979, when he and an older brother were apprehended in a burglary. The mother related a chronic history of lying and a 4-6 year history of stealing. He had run away from home at age 8 and again at age 9, on the first occasion damaging a trailer when on the second occasion being apprehended in a burglary of an apartment with 8 other children. Recently he had attempted to poison his mother by placing insecticide in Tylenol capsules and had hidden a knife under his mattress, bragging to his brother he was going to kill his mother and his boyfriend. The patient's academic performance was average and he had only minor behavior difficulties, generally relating well to other students.

The mother's history reflects she was raised by an alcoholic, unemployed father who was probably physically and sexually abusive. The mother dropped out of high school as she was pregnant but returned to finish her degree. She was married to the patient's father for 6 years but separated during the last 2 years at which time the family moved to Kansas City. The patient's father was a "daydreamer" who never followed through with anything. After the separation the father had no contact with the family. The mother was openly hostile toward her ex-husband who had provided no support but had recently contacted her and wanted the children.

The patient openly admitted his sadness and unhappiness related to not receiving any attention from his mother. He fantasized about a possible relationship with his father which did not exist. He explained his thefts were an

attempt to gain his mother's attention and to look cool to his friends. The mother had begun a relationship with a boyfriend who was living in the home. She was trying to provide her two boys with more monetary things in exchange for spending less time with them. The mother worked during the night shift during which time the two boys were left alone. The patient's brother also had psychological problems and had been referred for treatment.

Psychological testing at the time reflected a normal I.Q. in a young man who was anxious, tearful, and depressed. Testing reflected a rigidity in his responses and a tendency to react quickly and impulsively. He was characterized as being highly conflicted emotionally with high anxiety and inner turmoil. The conflicts were seen as stemming from the home environment. It was the patient's style to deny conflicts, alternatively withdrawing into depression or acting out his depression in an aggressive, psychopathic manner without consideration of the consequences and a minimum of remorse. The patient openly talked about suicidal thoughts and was felt to be at risk for suicidal or homicidal acts. The possibility of a thought disorder was considered because at times the patient's confusion approached paranoid ideation. The diagnosis was undersocialized aggressive reaction of childhood. Hospitalization was indicated to separate him from his home environment so that he could engage in intensive psychotherapy.

The patient was hospitalized at Western Missouri Mental Health Center from mid-August until 9/5/79. An additional evaluation confirmed the diagnosis of undersocialized aggressive reaction of childhood with depressive features. The recommendation was for long-term residential treatment.

The patient was admitted to Butterfield Youth Services in Marshall, Missouri, on 2/1/80. Additional history revealed the parents divorced in 1972 at which time the

patient's mother filed charges of physical abuse against her ex-husband and the ex-husband was committed for 6 months to the Arkansas Mental Health Center. The patient had become particularly disruptive during the last year frequently fighting with his brother, stealing money and jewelry from his mother, disobeying and lying. The patient did not want to return home because of the presence of a boyfriend in the home.

The patient's initial response was positive to the Youth Home and he seemed to adjust easily. He expressed no desire to return home and was enrolled in the 5th grade. He was noted to be a loner, did not like groups or athletic endeavors, and had difficulty with peers because of sarcastic cutting remarks. By the summer of 1980 he had visited with his mother and paternal uncle in Iowa and had begun to express more anger. He avoided discussion of his family situation. Although he did not do homework he made satisfactory grades. He complained of stress induced headaches and had difficulty concentrating on what he read or remembering visual or auditory materials. In early 1981 a hearing evaluation revealed no problems.

Educational testing done after his admission revealed unusual responses. In one example, when asked the reason we need policemen, he replied, "to get rid of people like me." He revealed plans to blow up a large building in Kansas City saying there was too large a population and the people would not be missed. Comments were made that he had a poor self-concept, poor attitude in school, was suspicious of authority, and lacked basic trust. He demanded much personal attention of the staff and was jealous of his peers. He reported having a vivid imagination and suspected he might be "crazy because of my thoughts." Occasionally he made bizarre derogatory sexual comments toward women prior to visits with his mother. The mother was described as passive and did not talk to the patient.

During the summer of 1981 the patient went with his family to visit his grandparents in Arkansas. His brother's mental health had deteriorated because of alcohol and marijuana use. At the Youth Home the patient had not been engaged in stealing but it was also noted he had no inhibitions against stealing. The patient also showed no motivation in school, did not participate in therapy, and was involved only sporadically with peers. Instead it was described that he sought excitement through drugs and hyperventilation. The comment was made that he needed the constant experience of excitement in order to feel alive from day-to-day. It was also described that he had little remorse and a "Swiss cheese conscience." It was felt he would not hesitate to be aggressive if he thought he could win. The patient, when interviewed, described that he liked the buzz of drugs and had been sniffing gasoline, glue, pot, and using uppers and downers since the age of 6. He estimated he had sniffed gasoline 500 times in the past three summers and at least 10 times since his admission to the home. He also hyperventilated and passed out by fainting and chest squeezing.

For the last 6 months of 1981 there was no family contact. The patient was described as withdrawing into a fantasy life and was suspicious of adults and peers. On one occasion in September he put gasoline into a toilet and set fire to it causing an explosion. He slept through his classes, his grades dropped, and he seemed withdrawn.

By early 1982 his motivation had further decreased and he refused to do school work. He maintained he wanted to go home and became flippant and defiant. He stole a bottle of rum and drank it. He began to experiment with drugs and by June was discovered bringing marijuana to the Youth Home. In the summer of 1982 his 15-year-old brother was admitted to the Crittenton Center for drug and alcohol addiction and later diagnosed as suffering from schizophrenia. The mother admitted that she used marijuana and had it in the home. The patient

brought back marijuana obtained from the home. The patient was often noted to be fantasizing about outer space and supernatural powers. He was found on several occasions playing with fire. When interviewed he described prior to coming to the home he averaged stealing \$60 a day which he would spend in arcades.

In the fall of 1982 the patient enrolled in 8th grade. He was suspended for fighting with another student and engaged in strange, "bizarre" behavior to keep other students from getting close. He was noted to have a poor prognosis. When asked about the benefit of treatment the patient replied, "I was helped to come out of my shell, I learned more about drugs, and I'm older." Dr. Chapel, the psychiatrist, questioned his motivation and prescribed an antipsychotic agent, Mellaril, for a disoriented thinking pattern and high anxiety. At one point the patient was found pointing to "the iceberg in the field," while at other times his conversations did not make sense. The psychiatrist did not feel it was due to drugs but that the person might have a schizotypal personality or developing schizophrenia. The patient was described as aimless and began pressing to go home to get out of the program. At school he failed half of his subjects and received 6 disciplinary reports. He was "stoned" at school on a regular basis, engaged in "weird" behavior, and his adjustment was tenuous.

By early 1983, he decided to wait out the school year until he could go home. His drug usage was temporarily curtailed. The psychiatrist wrote, "It appears to me that Heath has been emotionally separated from the program for many months, possibly as far back as the day he entered the program. He seems to have made little progress in any area, except in occasional spurts of short duration." In retrospect, although the patient was engaged in recreational therapy, art therapy, group treatment, and individual counseling, he did not actually have the intensive psychotherapy that was initially recom-

mended. Instead, he was engaged in a behaviorally oriented program of activities. His family difficulties and animosity toward his mother were never discussed. His behavior, if anything, deteriorated. His initial diagnosis in January 1980 had been adjustment reaction of childhood which was less severe than the diagnosis given at Tri-County Mental Health Center. It was believed that the patient was mildly depressed and felt hopeless about the future. He expressed some benefit from the Mellaril stating it made him less anxious and easier to relate to people. For the spring semester of 1983 he was transferred to private tutoring from public school. He decided he would try and earn his way out of the Youth Home and would not bring drugs from home as he had been caught on three out of five occasions. It was eventually decided that he might be more motivated if placed near his mother in Kansas City.

At age 14, on 5/23/83, the patient was admitted to the Crittenton Center. His diagnosis was again conduct disorder, undersocialized, nonaggressive. He was transferred to gain some family involvements. His mood was described as distant, aloof, and depressed. There were no problems initially except for "bizarre" behavior attributed to attention seeking. He refused medication. After he was told his discharge had been postponed he became indifferent and unavailable. When later told he would be discharged he began to work in the program and excelled. He particularly did well in sports and his school performance improved after they obtained a new computer. He was discharged on 11/17/83 to live with his mother and be followed weekly by a probation officer with drug screens. His final diagnosis was borderline personality and passive-aggressive personality.

Psychological testing at the center indicated isolated episodes of paranoid functioning. While he was described usually being hyperalert to his environment he was also prone to idiosyncratic interpretation of events. He was further described as having little appreciation of the

standards others used to guide their behavior. It was felt this could result in a violent release of energy with no internalized guilt. He had difficulty establishing an alliance with anyone. The psychologist stated, "There is explicit distrust of doctors and others who pose to help him, he perceives them, like himself as interested in accomplishing their own desires, and as likely as not to engage in deception and treachery to do so." The psychologist expressed a serious concern about violent, destructive, or self-destructive action.

The more recent evaluation at the Western Missouri Mental Health Center was significant for the patient's continued drug use of marijuana and LSD. He was described as having a fairly normal mental status where for the first time he expressed no aggressive preoccupation. He related that at the time of the offense he had ingested LSD approximately 4 hours preceding the event.

EXAMINATIONAL FINDINGS

The patient is slender, immature appearing, young man who is neatly groomed. He relates in a casual, unconcerned manner, as if he does not care about the impact of his statements. He is not defensive. On the contrary, he reveals much information that most would attempt to conceal or modify, with little appreciation of its damaging effects, despite being aware of the purpose of the evaluation.

The patient's speech is well modulated, coherent, and goal directed. His surface emotional presentation is one of false bravado covering an apparent hopelessness about his past life and current situation. Yet he distances himself from his actions, describing them in a detached manner, as if he were observing his own behavior with puzzlement.

While there is no evidence of a disorder of perception or thinking in the form of hallucinations or delusions, he possesses little understanding of his actions which often seem to be an impulsive reaction to the emotional stimulus of anger and depression.

The patient is correctly oriented to his surroundings with a normal memory and attention span. Intellectual testing revealed a full scale intelligence quotient of 105 but a large discrepancy between a verbal IQ of 95 and a performance IQ of 124. This is suggestive of an impulsive cognitive style where action is favored over reflection. He typically focuses on the concrete aspects of a situation with only a vague understanding of the rationale for traditional social mores.

The patient has little trust in others, no ability to empathize, and no sense of connectiveness to other people. However, this can cause him to feel bored and empty. He is depressed, seeing himself as evil, isolated, and alone and often fantasizes about death. To counteract these feelings, he engages in frenetic activity which stimulates him and counteracts his own feeling of deadness. He wants to be totally free of constraints or the demands of others. Consequently, he not only rebels against authority but against any attempts by others to connect with him. These attempts are viewed as placing restrictions or obligations upon him for the benefits of others needs and not his own. He is additionally subject to attacks of anger, anxiety, and depression which he tolerates poorly. These disturbing emotions distort his thoughts to the point he engages in fantasies that serve as a way of discharging his emotions, rather than utilizing his cognitive skills to cope with problems. Typically he denies and minimizes feelings which leaves him empty and relentlessly searching for excitement. Occasionally there are mass attacks of rage which he discharges in destructive action.

DIAGNOSTIC FORMULATION AND TREATMENT RECOMMENDATIONS

This adolescent is the product of an extremely chaotic home in which there was a lack of supervision and an open acceptance and even encouragement of drug usage on the part of parental figures. The presence of substance abuse and mental illness in the patient's only sibling also raises questions about a genetic component to the patient's chronic behavioral problems. In addition to a lack of supervision, there additionally seemed to be a lack of affection and nurturance in the home to the extent the patient has a profound developmental arrest. His ability to connect or to receive affection from others is lacking, as he views others as demanding or potentially exploitive.

This lack of human connectiveness leaves him feeling empty, alone, and vulnerable to the distressing emotions of anger, rage, anxiety, and depression. The patient's defenses against these emotions are brittle as he either denies his feelings or attempts to blot them out with alcohol or drugs. He has no experience and thus no ability in using his cognitive resources to modulate his emotional demands. When his defenses fail, his thinking becomes muddled and poorly organized with no conception of the rationale or consequences of his conduct. Unable to tolerate the demands of human relationships, the patient tries to alleviate his emptiness through relentless stimulation in the form of hallucinogenic drugs, thefts, or acts of danger in which he finds excitement. Ultimately, even this cannot produce lasting satisfaction and he explodes in fits of homicidal or suicidal rage generated by his hopelessness and frustration. This only serves to reinforce his innate sense of badness and further justify his isolation. In a sense he feels like an alien visitor and is preoccupied with death that at least offers some possibility of relief from an intolerable situation.

The treatment of this individual would be extremely difficult because of a developmental inability to connect with others. Treatment would have to be intensive, conducted by highly skilled committed personnel in a secure facility over a considerable period of time. Even under the best of circumstances his prognosis is guarded. Unfortunately this patient is unlikely to have greater access to such treatment in the future than he has had in the past.

OBSERVATIONS REGARDING COMPETENCY TO STAND TRIAL

The patient appears to have an accurate understanding of the charges against him, the potential penalty if convicted, possible pleas, and the role of the various officers and procedures of the court. Likewise he has sufficient memory and verbal ability to relate the details of his case to his attorney and assist him in preparing an adequate defense.

While the patient's cognitive capacity is intact, his actions in the case are governed more by his emotions. Prominent in this regard is his stated wish to die and determination to plead guilty to speedily effect this end. Since this is the case, he does not see his attorney as working in his own best interest. He is still insistent on a personal freedom, namely a freedom to die. He explains he fears torture more than death. He continues, death is no loss to him and that he prefers death to being locked up. He maintains he will not go to prison or a mental institution. He has thought of ending his life as he has "nothing to look out on." He believes he is a liability to his girl friend, his only connection, and his death would actually aid her in moving on with her own life. He labors under the assumption she is charged with a lesser crime and will receive a shorter penalty than himself. He expresses guilt at his own destructiveness and that he has hurt his girl friend, the victim, the victim's family, and his friends. He has only limited appreciation of the appeal

process or society's interest in his fate viewing this as only another intrusion and limitation of his own freedom.

In conclusion, while the patient has an adequate factual understanding of his situation and the ability to cooperate with his attorney, emotional issues may prevent him from acting in his own best interests. The weighing of these two factors, the cognitive versus the emotional, is the essence of the decision before the court.

OBSERVATIONS CONCERNING THE PATIENT'S MENTAL STATUS AT THE TIME OF THE OFFENSE

The patient described himself in the early summer of 1985 as being at a crossroads. He was on his own and free from the supervision of treaters, family, or the courts. He viewed his return to Kansas City as an opportunity for a new start and determined to go straight. However, devoid of skills or ability to modulate his emotions, he quickly fell vulnerable to frustration, despondency, and emptiness to which he responded resorting to the established pattern of impulsive thrill seeking, drug consumption and thefts.

The patient described that he is "scared when I go straight," stating there is "no security." Conversely, when he is "Pyzon", a nickname frequently applied to him, he is "confident," others "fear him" and he "runs the show."

The present offense is a carefully planned and executed crime, perpetrated with full awareness and realization of the illegality of the act. It also seems to be the rageful, impulsive enactment of a fantasized crime by one responding to his own hopelessness, rage, and frustration. Only after the act did the patient realize the full consequences of his behavior. He expressed less concern about the personal effect on himself, whom he already views as a lost cause, than upon the victim, the victim's

family, and his friends. When questioned about the wrongfulness of his actions, he stated, "shit yeah it was wrong. I don't understand, I've always done crimes by myself. This has hurt her (the victim), her children, Bo, Maggy, and Shades."

During the offense the patient seemed emotionally divorced from his actions, describing his reaction as mechanical, like a "machine." These actions seem less enacted out of passion than a total void of emotion.

In conclusion, the patient expressed fear of waiting more than dying, stating, "a wasted life is a dead life." His crime seems committed as much out of realization of the deadness of his own life as out of malevolence.

OPINION REGARDING THE PATIENT'S MENTAL STATE AT THE TIME OF THE CRIME

The patient suffers from a severe personality disorder characterized by enduring maladaptive patterns of perceiving, conceiving, and relating to his environment. Specifically this is manifest by his social isolation, suspiciousness of others, emotional aloofness, preoccupation with fantasies, impulsivity, drug usage, emotional liability with outbursts of rage, suicide attempts, and chronic feelings or emptiness characteristic of a borderline and schizotypal personality disorder. This condition has arisen from a conduct disorder undersocialized, aggressive type characterized by violence against persons and property and a lack of attachment to others which has existed since childhood. The patient also meets the criteria for hallucinogen, inhalant, and cannabis abuse.

While the current offense cannot be viewed entirely apart from the context of this patient's severe psychopathology, his recounting of his actions reveal they were carefully conceived and enacted in a deliberate manner with an awareness of their illegality manifest by numerous attempts to avoid detection. Therefore, although

this young man suffered from a mental disease at the time of the crime, he appeared to have the ability to appreciate the nature, quality, and wrongfulness of his conduct and the ability to conform his conduct to the requirements of the law.

This is not to say that the defendant did not suffer from significant impairment in his mental functioning as a result of mental disease which at the time of the crime hindered his emotional realization of the nature, quality, and wrongfulness of his conduct, and hindered his cognitive control of his behavior, but that his mental impairment does not appear to be to the extent that he would meet the legal criteria for insanity as defined under Chapter 552 RSMo.

/s/ William S. Logan, M.D.
WILLIAM S. LOGAN, M.D.
Date Signed 4-11-86

STATE OF MISSOURI
 DEPARTMENT OF MENTAL HEALTH
 DIVISION OF COMPREHENSIVE PSYCHIATRIC SERVICES
 MALCOLM BLISS MENTAL HEALTH CENTER
 St. Louis, Missouri 63104

December 29, 1986

The Honorable Andrew Higgins
 State of Missouri Supreme Court
 P.O. Box 150
 Jefferson City, Missouri 65102

RE: Heath A. Wilkins
 MB# : 06457/-
 Cause No. 68393

Your Honor:

I have completed the evaluation of Mr. Heath A. Wilkins, a 17 year old, single, Caucasian male who is currently confined at Missouri State Penitentiary in Jefferson City, Missouri, having been convicted of First Degree Murder, Armed Criminal Action, and Unlawful Use of a Weapon, Circuit Court Case Nos. CR185-490FX, CR185-491FX, and CR185-492FX in Clay County and sentenced to death on June 27, 1986.

The current evaluation was ordered by the Supreme Court of the state of Missouri to determine the competency to waive his rights to counsel.

During this evaluation, I interviewed Mr. Wilkins for three and a half hours at Missouri State Penitentiary and reviewed the following materials:

1) mental examination performed at Western Missouri Mental Health Center, dated December 16, 1985 by Dr. Steven Mandracchia.

2) psychological test report done at the Menninger Clinic in Topeka, Kansas by Dr. Melvin Berg, dated April 8, 1986.

- 3) a diagnostic interview report of Dr. William Logan, dated April 11, 1986.
- 4) an investigative report by the Board of Probation and Parole, state of Missouri, submitted by Mr. Steven Haynes, dated June 6, 1986.
- 5) a diagnostic report of the Classification Unit of the Department of Corrections written by Mr. Floyd George, CCW, dated July 8, 1986
- 6) transcript of the proceedings of the Supreme Court with appearances by Mr. Wilkins; Mr. John Morris, Assistant Attorney General; and Ms. Nancy McKerrow; and Ms. Janet Thompson, Assistant Public Defender (amicus curiae).

SUMMARY OF BACKGROUND MATERIAL:

Offense:

Mr. Wilkins, on 7/28/85, admittedly stabbed a female cashier at Linda's Liquor Store in North Bell, Kansas City. Mr. Wilkins who was a juvenile at that time made the statement in front of his mother and the Juvenile Officer, Ms. Joan Rumley, stating that he had taken a cab to North Kansas City Hospital where two of the codefendants stayed and Mr. Wilkins along with another codefendant went to Linda's Liquor to commit the crime. They watched people leave, then went inside to order a sandwich, at which time the codefendant asked to go to the bathroom. Mr. Wilkins continued indicating that he then asked for extra lettuce. The codefendant came out of the bathroom and grabbed the victim, at which time Mr. Wilkins admitted stabbing her where he thought her kidney was. He then continued stabbing her two or three times in the chest area and in the throat two or three times. Upon acquiring whether he knew they were going to kill the woman before they went to the liquor store, Mr. Wilkins reportedly answered affirmatively, indicating, "I told them there would be no witnesses."

Mr. Wilkins was subjected to competency examinations on 11/27/86 by Dr. Mandracchia; on 3/20/86 by Dr. Logan; and on 4/9/86 by Dr. Melvin Berg. Subsequently on April 16, 1986, a competency hearing was held and he was found competent to stand trial. A week later Mr. Wilkins was allowed to waive his right to counsel. On May 9, 1986 Mr. Wilkins withdrew earlier pleas and entered a plea of guilty to the charges of first degree murder, armed criminal action, and unlawful use of a weapon. During this time, Mr. Wilkins as well as the prosecuting attorneys recommended the death penalty. The court accepted the guilty plea. On June 22, 1986 following a sentencing hearing Mr. Wilkins was sentenced to death.

A *amicus curiae* brief was filed by Ms. McKerrow and Ms. Thompson which was heard on October 3, 1986, at which time having listened to the arguments and Mr. Wilkins' testimony, this examination was ordered.

Summary of Mental Examination at Western Missouri Mental Health Center:

Except for the report that Mr. Wilkins had ingested LSD approximately four hours before the alleged offense and having admitted to moderately heavy recreational use of both alcohol and a variety of illicit drugs (primarily hallucinogens), Dr. Mandracchia did not find any significant information and concluded that he does not suffer from any mental disease or defect, pursuant to the provisions of Chapter 552, Revised Statutes of Missouri. He also opined that Mr. Wilkins was competent to assist his legal counsel and cooperate with the court in his own best interest.

Summary of Dr. Logan's Report:

After exhaustive review of his past history obtained from Mr. Wilkins' evaluation at Tri-County Mental Health Center, Western Missouri Mental Health Center

during August and September of 1979, records from Butterfield Youth Services between the periods of 2/1/80 until 5/20/83, reports of staff members at Crittenton Center covering the period of 5/20/83 through 11/17/83, and a personal interview of five hours, Dr. Logan reported that Mr. Wilkins had an accurate understanding of the charges pending against him, potential penalties if convicted, possible pleas, the role of various officers and procedures of the court, and possession of sufficient memory and the ability to relate details of his case to his attorney, however, he stopped short of giving an opinion as to whether he was competent to proceed or not. Dr. Logan indicated in his report that although Mr. Wilkin's cognitive capacity was intact, his actions were governed more by his emotions. He emphasized that his wish to die and determination to plead guilty to speedily effect this and had resulted in his (Mr. Wilkins) feeling that his attorney was not working in his best interest. Thus, Dr. Logan stated, "In conclusion, while the patient has an adequate factual understanding of his situation and the ability to cooperate with his attorney, emotional issues may prevent him from acting in his own best interests. The weighing of these two factors, the cognitive versus emotional, is the essence of the decision before the court." Dr. Logan further opined that Mr. Wilkins suffered from a severe personality disorder characterized by enduring maladaptive patterns of perceiving, conceiving, and relating to his environment. He concluded that his diagnoses were "Conduct Disorder Undersocialized, Aggressive Type; Hallucinogens and Cannabis Abuse; Borderline and Schizotypal Personality Disorders." He also opined that although he had suffered from a mental disease at the time of the crime, he had the ability to appreciate the nature, quality, and wrongfulness of his conduct and the ability to conform his conduct to the requirements of law.

Summary of report of Dr. Berg:

After administering WAIS-R, Animal Choice Test, TAT, and Rorschach Test, Dr. Berg indicated that the referral had occurred because his attorney had in his possession forms written by Mr. Wilkins which presented rather morbid preoccupations regarding death and that he had shown a disinterest in mounting a legal defense and had shown readiness to accept the death penalty.

Dr. Berg found Mr. Wilkins to be functioning at a full Scale IQ of 105. On subtests, he demonstrated a disinterest or inability to sustain logical and stepwise problem solving in situations calling for careful and deliberate thoughts. There was some tendency to associate ideas on the basis of rhythm. For example, when asked to explain Marie Curie's achievement, he said, "For inventing mercury." The definition of "plagiarize" was, "The act of getting pleasure." Although he appeared to have cognitive capabilities, his responses to abstraction and integration were impulsive and reflective of an inaccurate, vague, and mildly distorted understanding of social conventions. He also used words and phrases in an odd, idiosyncratic manner, such as describing a slender individual as "demuscular" and referring to Martin Luther King as "freedom mover." After citing several examples of his responses to test situations, Dr. Berg opined that Mr. Wilkins presented a picture of Conduct Disorder, Undersocialized, Aggressive Type, a disorder manifested by acting out towards the outside world in an attempt to suppress underlying feelings of anxiety, depression, and anger. It was his opinion that these feelings interfered with his ability to think clearly, thus, giving rise to impulsive action which when combined with his anger at the outside world, which has rejected him, lead to spasms of destructive action.

Summary of Presentence Report:

Mr. Steven Haynes, after reviewing the past reports as well as talking to his mother, concluded that proba-

tion was not possible on the charges of murder, first degree; armed criminal action; and no recommendations were offered.

It should be noted that Ms. Wilkins reiterated the fact that he felt like a celebrity in jail and while growing up she did not have time for Mr. Wilkins because of her preoccupation with his older brother Jerrod. She admitted denying existence of serious problems with Heath even though they were pointed out by authorities at Butterfield and Crittenton.

Summary of Pertinent Past History:

Mr. Wilkins is the younger of two sons born to his father and mother. He was born in Little Rock, Arkansas and did not remember his father since his parents were divorced when he was approximately four years of age. He was raised in a rather poor socioeconomic environment and did have some problems in his school years. He admittedly fought with other students and organized fights with bunches of people. Mr. Wilkins reportedly had extremely chaotic upbringing during his childhood. He was physically abused by his mother, sometimes the beatings would last for two hours. Mr. Wilkins, during my interviewing, described how he and his brother would get locked in the bedroom and tape would be placed on the door. If the tape was broken then they would get punished. In spite of this, he felt that he was his mother's favorite child. As a child, he started robbing houses for knives and money and loved to set fires. Mr. Wilkins' mother worked at night and slept during the day, thus, the children were left alone at night by themselves. He claims that he was started on drugs by his uncle. Apparently he used to shoot BB guns at passing cars. Mr. Wilkins indicated that his mother's boyfriend had a quick temper and that he hated him. He also started disliking his mother, not only because she punished them, but also because she stood up for her boyfriend who was un-

kind towards them. He then decided to poison his mother and boyfriend by placing rat poison in Tylenol capsules. They were informed by his brother about the situation. They secretly emptied the capsules and made him eat them. He was afraid of death and attempted vomiting by placing fingers in his throat. Then he ended up getting a beating from his mother and boyfriend. At the age of ten, Mr. Wilkins was evaluated at Tri-County Mental Health Center and Western Missouri Mental Health Center. He stayed there for a period of six months. He was then sent to Butterfield Youth's Home and then to East Range, a residential facility for boys. He started using drugs quite heavily. In addition to marijuana, which he grew on his own, he also abused inhalants, specifically a substance called "rush" which was a locker deodorant and gasoline. He additionally stole LSD from other residents which admittedly caused him to have hallucinations. He also started drinking hard liquor and because of his drug and alcohol usage, he was kicked out of the eighth grade.

At Butterfield, he was very angry at the teachers because they considered him to be "dumb." He showed rather strange behavior there. When he became depressed he would dance with a net over his head. On another occasion he cut his wrist and claimed to have had frequent thoughts of suicide. Prior to going to Butterfield, he had jumped off a bridge but the car swerved before he was hit. At Butterfield, he attempted to overdose with alcohol and drugs, and another time with anti-psychotic medication, Mellaril. Mr. Wilkins was placed on Mellaril because he was "too active." He stayed at the Butterfield Youth Home for three and one half years between the ages of 10 through 13-1/2. After that, he was transferred to Crittenton Center since it was closer to his mother's residence. He stayed there only for four or five months and was then kicked out. The court gave him permission to go home on probation. At this time his mother had started seeing another boyfriend and Mr.

Wilkins apparently liked him. He continued the usage of alcohol and drugs while at school, continued to break into houses stealing money, jewelry, and knives, and generally stole money to spend at the arcade. On one occasion he ran away to Southern California. He was introduced to amphetamines there and spent all his money. His mother wired a ticket for him to return home. After his return, Mr. Wilkins was charged with a stolen knife and was sent to Detention Center in Mexico, Missouri. At age 15 he was sent to the Northwest Regional Youth Services in Kansas City. There, an attempt at prescribing Thorazine (major tranquilizer) was made. After this, Mr. Wilkins was placed in a foster home. He ran away from the foster home and lived in the basement of the home of a friend who was a tree trimmer and worked with him approximately two months. At this time he opted to go to the Job Corps. Thus, the parole was not violated. He went to Clearfield, Utah, but after a week he quit and returned to Kansas City to begin living on his own. Beginning in May of 1985, he lived on the streets, frequently sleeping in a park and dating a young girl whom he had met at Northwest Regional Youth Services. He actively looked for a job using his mother's phone number. However, his mother did not relay the calls to him and thus he continued to steal merchandise, selling it to a fence for profit. He was getting more and more involved with drugs and alcohol, LSD being his favorite drug. Prior to the alleged offense, he had been kicked out of his mother's house because she felt she was being lied to and he was living in a park with his friends. Mr. Wilkins reported that during this period of time, he could not sleep, eat, or even engage in sex with his girlfriend. He was using homemade LSD quite often, and on the day of the alleged crime he had done three hits of "black dragon (LSD-like hallucinogen).

As per Dr. Logan's report, who had evaluated prior records at various facilities, indicated that Mr. Wilkins had expressed sadness and unhappiness related to not

receiving attention from his mother, to staff at Tri-County Mental Health Center, and had fantasized about a possible relationship with his father which did not exist. He explained that the thefts were an attempt to gain his mother's attention and to look cool to his friends. Psychological testing at that time reflected a normal IQ, and the symptoms of anxiety, tearfulness, and depression were noted. The records also indicated that he had a tendency to deny conflicts alternatively withdrawing into depression or acting out his depression in an aggressive psychopathic manner without consideration of the consequences and a minimum of remorse. He openly talked about suicidal thoughts and felt to be at risk for suicidal or homicidal attacks and the possibility of a thought disorder of paranoid nature was considered as a diagnostic possibility.

Records from Butterfield Youth Services in Marshall, Missouri indicated that Mr. Wilkins' natural father was committed to a mental institution in Arkansas, and there was considerable amount of physical abuse that existed in the family. Mr. Wilkins was considered to be a loner and had alienated his peers because of sarcastic, cutting remarks. He complained of stress induced headaches and had difficulty concentrating on what he read or remembering visual or auditory materials, although a hearing evaluation revealed no problem. In the educational testing, he gave rather unusual responses. For example, when asked the reasons why we need policemen, he replied, "To get rid of people like me." He also revealed plans to blow up a large building in Kansas City saying there was too large a population, and the people would not be missed. He also made bizarre derogatory sexual comments towards women prior to visits with his mother. He had episodes of hyperventilation and passed out by fainting or chest squeezing. In the last six months of 1981, there was no family contact and he started becoming suspicious of adults and peers. On one occasion in September of 1981, he put gasoline into a toilet and set

fire to it, causing an explosion. Mr. Wilkins' brother was diagnosed to be suffering from schizophrenia when he was admitted along with Mr. Wilkins in 1982 at Crittenton Center. Mr. Wilkins was often noted to be fantasizing about outer space and supernatural powers. In the fall of 1982, Dr. Chapel, the psychiatrist at Crittenton Center, recommended placement on Mellaril because of a "disoriented thinking pattern and high anxiety." In 1983, his condition started deteriorating. He was transferred to private tutoring from the public school, and he decided to try to earn his way out of the Youth Home. His final diagnoses in November of 1983 when he was discharged from Crittenton were Borderline Personality and Passive-Aggressive Personality. Psychological testing at Crittenton indicated isolated episodes of paranoid functioning. There was explicit distrust of doctors and others who pose to help him, whom he thought were interested in accomplishment of their own desires, and the treating psychologist expressed a serious concern about violent, destructive, and self-destructive action.

Summary of Interview at Missouri State Penitentiary:

Mr. Wilkins who is a rather diminutive individual with a short beard and moustache. He was handcuffed and interviewed in an open cell in the death row area. There were two officers sitting outside of the cell and I was accompanied by Ms. Penny Hooss, psychologist working at the Missouri State Penitentiary. After informing him of the purpose of my visit which he clearly understood, Mr. Wilkins decided to talk freely, however, repeatedly looked behind him at the officers as if to see if they were hearing or watching him. He repeatedly tried to roll his own cigarettes to smoke, however, threw the tobacco and the paper on the floor, having failed in his attempts. On two occasions, he did borrow cigarettes from the guards. In spite of his suspiciousness Mr. Wilkins was quite cooperative during the interview and imparted information

quite readily. Mr. Wilkins' interview was geared towards eliciting information to determine his ability to understand his Constitutional Rights and his reasons for waiving his right to counsel, in addition to assess his mental status in order to determine his ability to receive, retain, and recall information.

In spite of rather difficult circumstances, Mr. Wilkins talked rather freely and was functioning at the Bright Normal range of intelligence. This intelligence appeared to be consistent with his previous testing done by Dr. Berg.

Mr. Wilkins' version of the offense was basically similar to that he had imparted to other psychiatrists and police with one exception, that he stated that he did not plan to hurt anybody prior to the alleged offense, but merely had planned to rob in order to get money for drugs, although he did admit to the statement he had made to his codefendants and the police that he did not want any witnesses. Mr. Wilkins was able to give extensive details of his past history, including his tenure at Butterfield and Crittenton, as well as his treatment at Western Missouri Mental Health Center and Tri-County Mental Health Center. He recalled that his experiences there were rather horrifying. Mr. Wilkins dwelled rather extensively at his experiences at being put in straight jacket and being "pumped with Thorazine," causing him to feel like a "zombie." He also talked about being sexually abused at one of the Detention Centers in a tangential way while describing why he did not opt to be in the general population of Missouri State Penitentiary. Mr. Wilkins talked about his difficult times at home, including his anger towards his mother and stepfather (mother's boyfriend) who had been physically abusive towards him and his brother and readily admitted that he had had thoughts of killing them by putting rat poison "cyanide or arsenic" in Tylenol capsules and how he became horrified and scared to death when they found out about it,

emptied the capsules, and made him swallow them. He compared such experiences at home with those at Butterfield, Crittenton, and the mental health centers, and how these experiences had led him to live on the streets and use drugs. His descriptions of all of these experiences as well as his feelings did not reveal any delusions (fixed ideas unshakable by logical reasoning). Mr. Wilkins denied any hallucinations (perceptions of hearing, seeing, feeling, smelling, or tasting without perceptual stimulation).

In order to understand his reasoning for waiving the counsel during the trial, Mr. Wilkins, in response to the question as to why he "fired his attorney," stated as follows: "I did not want an attorney because he did not want to ask for the death penalty. I felt that no attorney would want me to do that, also they would argue that anybody that wants to die is not making the right decision. They feel that as long as you have life you have a chance. When I pleaded guilty, I didn't have an attorney, I told the judge I deserved the death penalty since I had committed a cold-blooded murder." When asked whether he was capable of presenting both aggravating and mitigating circumstances to arrive at the opinion that he should get the death penalty, Mr. Wilkins answered, "I don't know of any mitigating circumstances. They were saying that my background history was poor, but I don't think that anybody should drag other people into this." Mr. Wilkins admitted that he did not want his past history to be "dragged around" in the court. He continued that he had told Dr. Logan a lot of things but many things were then twisted around, and he felt that much of the information would not have helped him anyway. He stated for example, he was reported to have shot at passing cars, etc., "I didn't have any gun to shoot at passing cars, I had a BB gun. I wouldn't be that stupid to kill people like that." Mr. Wilkins further added that he did not want his mother's physical abuse

of him to be brought out because he likes his mother and has developed a better relationship since his incarceration. When inquired as to why after pleading guilty he did not let the judge make up his mind about giving him either 50 years without parole or the death sentence since it was up to the judge to decide sentencing based on the information available to him, Mr. Wilkins stated, "I would rather die than spend the rest of my life in prison. I thought I would get better treatment if I asked for the death penalty because I would be in a special population. Have you seen what they can do, I have been told a lots of horror stories." When asked why he did not choose for a jury trial since it may have resulted in a lesser sentence, he stated, "What's the difference between 25 years and 50 years, you still have to spend your time in the general population, getting raped or stuck in the solitary and then they pump Thorazine and all kinds of stuff into you. People on the outside don't know how it is." Mr. Wilkins indicated that although he had not been in an adult prison, he was equating his experiences at Butterfield, Crittenton, and other mental hospitals to be equal to what he would be going through in the general population or possibly worse than that. In emphasizing this points, he indicated that he was placed in SMU (Social Maladjustment Unit), where he was placed in a solitary cell without any interaction with others and was stripped of all of his possessions as well as clothing. In his mind, this experience at the SMU was equivalent to what he had experienced on occasions at the other facilities which caused him to run away from them. He indicated that that's the kind of life he would have if he were to be in general population during 25 or 50 years, and thus, had opted for the death penalty. Mr. Wilkins was then questioned as to why he underwent psychiatric examinations if he had always wanted to plead guilty and opted for a death penalty. He indicated that he wanted to go through the psychiatric examinations so that they could consider him competent and then he could plead

guilty. Mr. Wilkins' reasoning as to why he told Dr. Logan about his desire to opt for a death penalty if he wanted to be considered competent, he stated he wanted Dr. Logan to know everything about himself because he wanted him to know why it would be better for him to die. When inquired as to why Mr. Wilkins wanted to discharge his attorney when he had indeed done his part to prove that he is not "insane" and that he was competent to stand trial, Mr. Wilkins stated, "My attorney would not go for a death penalty." When asked as to why he has not sought some legal counsel while he is staying at the death row, Mr. Wilkins stated, "I want the death penalty so why should I ask for an attorney to appeal my case. There is nothing to appeal." Later on he stated, "I want to shorten all the legal steps as much as possible." When asked whether he would be satisfied if all the legal appeals were exhausted and then he could be put to death the next day, Mr. Wilkins replied, "No, I'm not prepared for that yet." He also stated that he is not looking for suicide because, "If I wanted to just die and kill myself I would have done that since I have had many opportunities to do so in jail or at prison. When asked why then he would not be prepared to die the very next day, Mr. Wilkins replied, "Nobody wants to die and I have to prepare myself for it." At this point of questioning Mr. Wilkins started realizing that he is rather ambivalent about the death penalty and immediately started stating, "Are you going to file this report without any emotional bias or you're just going to say I'm incompetent. I'll be very disappointed with that."

Further inquiring as to why he did not want his background information presented as mitigating factors and why he now claims that he did not use any drugs prior to the alleged crime when he had already made the statements to both Dr. Logan and Dr. Mandracchia that he indeed was using LSD prior to the alleged crime and that his actions were described by him as "stupid" and that

he was "consumed," in relation to this, and that he made a statement to the doctors examining him that he realized his actions did not make any sense, why he is denying those claims and statements now stating that he was not taking any drugs prior to the alleged crime. He hesitated, but then added that those can't be considered mitigating circumstances. Mr. Wilkins spontaneously stated, "Have you ever seen anybody put to death yet. There are lots of people sitting on the death row but nobody gets killed. They all get special treatment and you can go on for a long time before you can die, and I'm going to get that time."

Mr. Wilkins' orientation was appropriate. He was able to give the time, date, year, etc., as well as his demographic information appropriately. He was able to recollect past events in a rather chronological order without any difficulty in recollection. He was able to abstract from proverb, was somewhat idiosyncratic, he interpret the proverb 'Don't cry over spilt milk' as "You have to be responsible for what you do."

In order to determine what are the alternatives he could have or he has thought of in his particular legal situation, Mr. Wilkins was asked questions related to the understanding of his legal options. He indicated that he understood that if he were to be considered incompetent to waive his Constitutional Rights, he will have to be forcibly accept a legal counsel. He stated that he is afraid that if he were to be considered mentally disordered by a psychiatrist he may have to go back to a mental institutions which he detested the most. He also understood that if he is reconsidered for 50 years without parole because he has already pleaded guilty to first degree murder, he would be moving into general population which again is not a desirable option for him, primarily because of his feeling that he will be mistreated both by the staff and the inmates. Mr. Wilkins understood that there is a remote possibility of being pardoned

by the Governor or there may be some technical problems in the presentation of his case which might result in overturning the decision or he might get a rehearing. He stated that in spite of that he does not see how he could get out of the prison system and that instead of going through his life in the general population, he would rather stay on the death row and take the death penalty.

DIAGNOSES:

Based on Mr. Wilkins' history and his age, he fits the diagnosis of Conduct Disorder, Undersocialized-Aggressive Type. The behavior that was taken into consideration for this diagnosis is evidenced by aggressive activity against persons and property, thefts outside of the home, having any peer or group friendships or relationships which lasted only over a very short period of time, evidence that he has shown remorse and guilt about certain actions which were considered dysocial even when he was not incarcerated or was in any difficulty, his current situation which resulted as a collective action of four people, however, his refusal to blame them and take all of the responsibility upon himself and having had this behavioral difficulties for a number of years resulting in institutionalization. Mr. Wilkins also has an extensive history of alcohol and drug abuse having used gasoline, glue, pot, uppers and downers since the age of six on a rather regular basis and having used LSD quite frequently. These diagnoses are the primary diagnoses in his case and can be formally placed on Axis I of the Diagnostic Coding suggested by Diagnostic and Statistical Manual of Psychiatric Association.

The diagnosis on Axis II or disorders of personality and underlying difficulties in responses to stressful situations in an individual can be applicable in Mr. Wilkins' case as Dr. Logan had pointed out and Mr. Wilkins certainly meets the criteria for such diagnosis. His diagnosis under this axis would be that of Borderline Per-

sonality Disorder. A person with such disorder has difficulty in establishing a pattern of predictable response to stressful situations vacillating between aggression towards others or self-destructive activity.

Other than this, Mr. Wilkins also has been seen to be exhibiting bizarre behavior, paranoid ideation, and idiosyncratic thinking dating back to 1982 when he was at Crittenton Center for drug and alcohol addiction and was diagnosed as suffering from schizophrenia. This diagnosis was not made at this time because of lack of further evidence and the possibility of many of his symptoms may be related to alcohol and drug usage.

DISCUSSION:

Having no clear-cut psychiatric test to determine competency to waive Constitutional Rights and legal counsel, it was felt necessary that one should define mental disease, defect, and disorder, ability to reason, and one's ability to act upon these reasons in a rational manner in order to arrive at an opinion whether Mr. Wilkins meets the appropriate criteria from a psychiatric viewpoint to waive his rights.

Mental disease and defect are legal terms for which there is very little definition available from a psychiatric viewpoint, however, it is generally accepted that mental disease is a term applied to conditions which present themselves as an abnormality of thinking or mood such as hallucinations, delusions, manic behavior, and depression, as well as pervasive anxiety which is manifested by paralysis of effective functioning in reality which is complained by an individual. Mental defect is a condition which causes a person to have difficulty in either receiving, retaining, or recalling information and applying it in reality situations. The latter is generally manifested by people who have mental retardation or organic brain deficit.

Mental disorders are defined as clinically significant behavioral or psychological syndromes or patterns that occur in an individual manifested either by a painful symptom or impairment in one or more important areas of functioning. Under this concept, Mr. Wilkins' condition appears to be related to a mental disorder rather than a defect or disease. Reviewing past history as well as records, it appears that Mr. Wilkins for most of the time has had conscious control over his behavior. However, the reasoning behind his conscious behavior appears to be based on lack of rationality and disregard for long-term consequences. For example, when he had tried to poison his mother and her boyfriend he seems to be quite aware of the wrongfulness of such action. However, in his mind his reasoning was "If they don't understand you or are abusing you then it is alright to kill them." Such rationalization discards any consequences of such action and jeopardizing one's future growth and freedom in view of immediate elimination of the problem at hand. It could be argued that similar thinking is present in antisocial persons, however, Mr. Wilkins not only had not developed a full personality and was a child when such reasoning was evidenced. An antisocial individual is a physically mature person who does not have to depend on others for nurturance unlike Heath. Similar reasoning is evident in the alleged crime. Mr. Wilkins asking for the death penalty also seems to be based on such faulty reasoning. He starts by the premise that he deserves the death penalty because he had committed a cold-blooded murder. However, immediately adds that nobody on the death row has died yet, so not only that he will live but also will get the special privilege of being on the death row as opposed to the imagined torture and humiliation in the general population. It should be noted that Mr. Wilkins' description of what happens or what could happen in the general population of Missouri State Penitentiary is based on his experience at juvenile homes, foster homes, and mental health centers and not based

on adult experience at these facilities. Awaiting his placement in death row, he was in the SMU (Social Maladjustment Unit) where he subjectively felt being treated worse than at the death row. He equates this to the treatment he would receive in the general population. During the interview, when it was repeatedly pointed out to him that there were several mitigating factors in his case he chose not to elaborate on them and repeatedly made the same statement over and over that he deserves the death penalty because he had committed a cold-blooded murder. Mr. Wilkins not wanting his mother to be brought into the court and to be portrayed as an unfit mother also seems to be based on the fact that he does not want to jeopardize his relationship with his mother which seems to have improved after his conviction. He tends to completely ignore the fact that he was living in the Penguin Park for several days having no place to live because of his mother's total abandonment in spite of his being a juvenile. Mr. Wilkins, during the current interview, denies any drug usage prior to the alleged crime, although he had admitted such to Dr. Logan on five occasions, again indicating that he vacillates in his choice of means to achieve the goal of wanting to be punished by death. If he had adequate and consistent reasoning he probably would have made the statement to Dr. Logan that he had premeditated the murder and that he did not have any drugs or alcohol in his system before he went there to the scene of the crime. His current denial and the statement that Dr. Logan had misunderstood many of his verbalizations appears to be an impulsive decision in order to expedite his execution again whether he really intends that is not clear because when a direct question is posed if he would like to be executed tomorrow if all the legal processes could be terminated today, he answers negatively, claiming that he is not ready to die yet. Thus, the reasoning for waiving his Constitutional Rights is based on his tendency to use limited pieces of information to justify

his emotional bias. He tends not only to convict himself but also pass a judgment as to how he should be punished. This tendency was evident when asked by the trial judge for a recommendation. Mr. Wilkins joined the prosecuting attorney in recommending a death penalty.

Mr. Wilkins' psychological test done by Dr. Berg also reveals his disinterest or inability to sustain logical and stepwise problem solving in situations calling for careful and deliberate thought.

His testimony at the time of his hearing on October 3, 1986 at the Supreme Court when summoned by Chief Justice Higgins, Mr. Wilkins instead of addressing the issues raised by the attorneys for *amicus curiae* and the Assistant Attorney General made rather curious comment which sounded almost like he was presenting the mitigating circumstances in his case, however, ended up stating that he had made a rational decision to waive the counsel. He stated, "Your Honor, there were several comments made into the question of my competency at the time of the crime, and also my competency at my trials and my hearings. I would like to, for the court to be aware of, as was stated by the ladies and gentlemen over there, that I had a I don't know the exact words to put it in, a background of mental and psychological problems and that I've been in some previous institutions. And I would just like for the court to be aware before the crime, I was in an institution known as Northwest Regional Youth Services, run by the Division of Family Services of the state of Missouri. That is an intense psychological and . . . intense psychological program to help children of the ages of 14 to 18 and to decide if they need any further mental evaluations . . . any help to help them proceed into society and to become decent citizens. I was in that program for I think as I can recall for over 9 months, and I completed that program and I was released on a . . . into the custody of

my foster parents that I was assigned to, and I had, I guess, I would put it into my language, a clean bill of sale. I completed a highly intense evaluation and program set up by the state of Missouri specifically for situations and problem children like me, and I completed the program. And I would, as was mentioned by one of you gentlemen a little earlier, about Mandracchia, when he did his mental evaluation of me at the time, he did not know that I had intentions of seeking the death penalty. And then when Dr. Logan and his associates did their evaluation later in time, they did know that I was seeking the death penalty. And that there should give a very clear, as . . . let you see both sides of the, how should I put this . . . to let you understand that something wasn't spontaneous act, because at the time Mandracchia, the first mental evaluation was commenced, I had already made that decision and consulted with my attorney, Mr. Duchardt, who was at that time my attorney, about what I wanted to do. And then I asked him, don't . . . let's not . . . let's keep this between us, and so we went on with the evaluations. And I think that there has a lot to do with Dr. Logan's opinion that he would rather leave it to wiser souls than himself, which I respect.

Also there came up a question it was never questioned that . . . why I dismissed my public defender, Mr. Duchardt, why I dismissed him. And it was also stated that I said, 'Well, if the attorney could help me get the death penalty.' At that time Mr. Duchardt was having some turmoil within himself because I was asking him to do something that was against his moral and ethical judgment and his values. And I felt it upon myself to make the decision that when an attorney is faced with those obstacles, that I would proceed in the direction in getting the goals that I wanted without the assistance of an attorney. And that is why, that is why I did that. That's all I want to say."

Having discussed the difficulty in Mr. Wilkins' reasoning capabilities, I would like to make a brief comment as to his cognitive capabilities. Without laboring into the findings of previous psychological tests I would have to concur that Mr. Wilkins' ability to perceive, retain, and recall information is adequate for the purposes of courtroom situations and if he wanted to he could impart the same information to his legal counsel. Thus, his determination that he was competent to proceed was appropriate. However, currently we are at a point where we have to determine whether Mr. Wilkins is capable of acting in his own behalf. This is where the question of reasoning ability and acting out impulsively without regard for long-term consequences etc. becomes a point of discussion. Both Dr. Logan and Dr. Berg had discussed this issue in their finding at length and behavioral observations of Mr. Wilkins' behavior at the institutions he was housed has been quite well documented in the records. These behavioral observations date back to 1980 and are congruent with the psychological test findings of Dr. Berg. These include his suicidal attempts, his aggressive behaviors and intense anger towards females. Another example of Mr. Wilkins acting out in a self-destructive manner is the fact that although he understands that he had committed a crime for which the penalty would be either 50 years in prison without parole or death penalty, he chooses the death penalty for unclear reasons. On one hand he claims to waive his right to counsel to expedite the process but on the other hand he does not want to be executed tomorrow, that being too soon. A person with a fully competent mind will not hesitate to take the quickest route if he has already determined the end. This clearly shows his impulsive and emotional decision making tendency based on faulty or inadequate information. He also fails to understand that the ultimate fact finding and judgment is the function of the jury or the judge and that he must impart truth but facts regarding his development, his reasoning, his

understanding, and his feelings before the crime, at the time of the crime, and after the crime in order that appropriate punishment could be meted out. He also seemed to be rather concrete on his understanding of the degree of severity of his crime and his position seems to be that either he is free on the streets or he is put to death rather than "suffering" for a long time in the prison population. Even if Mr. Wilkins was to plead guilty to the charges he should present an accurate picture of the facts as they occurred including his prior history of psychiatric problems in order for the judge or the jury to make an appropriate decision. It appears that such rational thinking is not present with Mr. Wilkins, partly because of his age, partly because of his lack of growth in an emotionally secure environment and lack of parental supervision which led to his subsequent inadequacy to establish himself as a person in his own right. Mr. Wilkins' background also includes a mental illness in his natural father as well as his brother which presents a strong possibility of genetic predisposition to mental disorder which may have contributed to his distorted reasoning.

SUMMARY AND RECOMMENDATIONS:

1. Mr. Wilkins suffers from a mental disorder which cannot be specifically considered a mental defect or disease within the meaning of Chapter 552.010, Revised Statutes of Missouri. However, this disorder does effect his rational reasoning and impairs his behavior.
2. Because of his mental disorder he suffers from an impairment of reasoning which prevents him from imparting information without judging his actions, he is not competent to waive his Constitutional Rights and represent himself in front of the court.
3. Because of his unimpaired ability to receive, retain, and recall information, he is competent to assist his

attorney if one is appointed, although on occasions he may choose not to cooperate with him and evidentiary facts may have to be put forth by testimony of others.

Thanking you.

Respectfully submitted,

/s/ S. D. Parwatikar, M.D.
S. D. PARWATIKAR, M.D.
Forensic Psychiatrist

SDP/cmr

IN THE CIRCUIT COURT
OF CLAY COUNTY, MISSOURI
SEVENTH JUDICIAL CIRCUIT OF MISSOURI
Liberty, Missouri

Be it remembered at the June Term, 1986, the same being the 27th day of June, 1986, the following proceedings were had before the Honorable Glennon E. McFarland, Judge of Division Number One to wit:

Case Number CR185-491FX

STATE OF MISSOURI

Plaintiff

vs.

HEATH A. WILKINS
a/k/a Pyzon

Defendant

Now on this 27th day of June, 1986, the State appears by prosecuting attorney and defendant appears in person. Defendant is again encouraged by the Court to accept the appointment of counsel or to obtain ~~his~~ own counsel and that he has a right to counsel and to trial by jury for all stages of this proceeding. Defendant having previously refused to accept the assistance of counsel now continues to refuse to accept the assistance of counsel. Defendant waives trial by jury for all stages of these proceedings.

State presents evidence. Defendant presents evidence.
State presents argument. Defendant makes statement
asking that the death penalty be imposed.

Court finds that defendant on May 9, 1986, withdrew previous plea of not guilty and not guilty by reason of mental disease or defect excluding responsibility and entered plea of guilty to the offense of Class A felony of murder in the first degree. Said plea was accepted by the Court. The Court finds that defendant at all times was and is mentally competent.

With respect to the murder of Nancy Allen by defendant, the Court finds beyond a reasonable doubt that the following aggravating circumstances exist:

1. The murder in the first degree was committed while the defendant was engaged in the perpetration of the felony of robbery, and
2. The murder in the first degree involved depravity of mind and that as a result thereof, it was outrageously or wantonly vile, horrible or inhuman,

The Court further finds beyond a reasonable doubt that either or both of such aggravating circumstances found to exist warrant the imposition of the death penalty. The Court after considering all other proper and lawful matters finds that the death penalty should be imposed.

The Court having announced to defendant the sentence to be imposed and having asked defendant whether he knows of any legal cause why judgment and sentence should not be imposed, and no cause to the contrary being shown or appearing to the Court, it is THEREFORE ORDERED, SENTENCED AND ADJUDGED that the defendant suffer the penalty of death. Defendant then asked if there be any legal reason to show that the execution of sentence should not be carried out. Court finds no legal reason why execution of sentence should not be carried out. It is further ordered that the Sheriff of Clay County, Missouri, deliver the defendant, Heath Wilkins, to the Warden of the Missouri State Penitentiary at Jefferson City, Missouri, on or before July 3, 1986.

and that the Warden of the Missouri Penitentiary at Jefferson City, Missouri, execute the sentence of death in this case on August 25, 1986, by the administration of lethal gas within the walls of the State Penitentiary at Jefferson City, Missouri, and that proper warrant issue accordingly.

/s/ Glennon E. McFarland
 GLENNON E. McFARLAND
 Judge, Division Number One

SUPREME COURT OF MISSOURI
 EN BANC

No. 68393

STATE OF MISSOURI,
Respondent,
 v.

HEATH A. WILKINS,
Appellant.

Sept. 15, 1987

Rehearing Denied Oct. 13, 1987

BILLINGS, Chief Justice.

Defendant Heath A. Wilkins pleaded guilty to first degree murder and was sentenced to death for the brutal and multiple stabbing killing of a 26-year-old mother of two small children during the course of a robbery of the victim's convenience store. Affirmed.

Defendant, proceeding pro se after dismissing and waiving appointed counsel, entered pleas of guilty to the murder charge, armed criminal action (sentenced to life imprisonment), and unlawful use of a weapon (sentenced to five years imprisonment), the last charge arising at the time of defendant's arrest approximately two weeks after the murder. Even though defendant dismissed and waived his right to an attorney, the trial judge directed the attorney to stand by throughout all of the proceedings and be available to counsel and advise the defendant upon the latter's request.

The transcript of some 300 pages clearly reveals that the experienced and capable trial judge, the Honorable Glennon E. McFarland, fully explained, time and time again, defendant's various legal rights. Judge McFarland made repeated efforts to dissuade defendant from dismissing counsel and proceeding without an attorney. And, the conscientious trial judge offered to permit defendant to reconsider and withdraw his guilty pleas. Throughout the several court hearings, the defendant told the trial judge that he had fully and knowingly considered the alternative punishment of life imprisonment without eligibility for parole and that of the two possible sentences he preferred the death sentence. Section 565.020, RSMo 1986.

Because of defendant's stated position and acting as his own attorney, defendant did not take any of the prescribed steps to appeal his guilty plea and death penalty. Nevertheless, this Court requested the State Public Defender to enter the case as *amicus curiae* and to brief and argue "any issue subject to review."

The case was argued before the Court after defendant, appearing in person, advised the Court that he did not want the assistance of an attorney in the proceedings in this Court. At the conclusion of the arguments, the defendant was permitted to make a statement to the Court in which he took issue with some remarks of the public defender arguing the case. The Court ordered defendant examined by the Department of Mental Health of Missouri to determine defendant's competence to waive counsel on appeal and ordered the case held under submission pending the report.

The report and evaluation of the defendant by the Department of Mental Health was filed with the Court, and the Court set aside the submission and appointed counsel to represent defendant. New briefs were filed and argument heard anew.

The complete record, consisting of the legal file and transcript, are before the Court. In order that this Court can properly review the death penalty imposed in this case and also consider the points advanced by the appointed counsel, it is necessary to set forth in some detail the evidence which led to the imposition of the ultimate penalty.

Approximately two weeks before July 27, 1985, the date of Nancy Allen's murder, defendant's friend, Patrick Stevens, was telling the defendant that he needed some money. "I [Wilkins] said, 'I know where we can get some money.' . . . I told him exactly how we were going to do it and where we were going to do it." Defendant then described to Stevens a plan to rob Linda's Liquors, which was later communicated to two other confederates, Ray Thompson and Marjorie Filipiak. Linda's Liquors and Deli was owned and operated by Nancy and David Allen. It is a small convenience store located in the town of Avondale.

The four freely discussed the plan to rob Linda's or an alternative location during the next two weeks. Defendant also stated to the others that he would kill whoever was behind the counter because he wanted no witnesses. During the period before the crime, defendant sharpened his "butterfly" knife (a narrow-bladed martial arts weapon) with a diamond file. Defendant's girl friend, one of the four privy to the plan, attempted to dissuade him from his murderous plot. She had obtained some money from her parents and offered to run off with defendant but he declined.

On the evening of July 27, 1985, the four individuals were together. Defendant and his cohorts decided that the robbery of Linda's Liquors and Deli was on for that night. They all went to North Kansas City Hospital where they arrived about 10:15 p.m.

Leaving the other two, who were to secure taxis for after the robbery, defendant and Stevens left the hos-

pital. To avoid detection they went through the woods to the deli. They carried a bag for carrying stolen merchandise. They arrived at a creek near the deli about 10:30 p.m. They observed the deli for a time because there were customers present. When the last customer had gone, they approached the deli. They took a towel out of the bag and wiped their shoes so that they would not have mudprints. So that the counter person, Nancy Allen, would not be suspicious, they left the bag outside.

According to their prearranged plan, defendant ordered a sandwich while Stevens went to the rest room behind the counter. Noticing that Nancy Allen was not where Stevens could easily reach her, defendant asked her for additional lettuce. When she moved to comply with the defendant's request, Stevens rushed out of the rest room and grabbed her. Defendant went around the counter and thrust his knife into her back. Defendant said he was aiming at the kidneys, which he thought would be a fatal wound.

Nancy Allen fell face down onto the floor. However, she rolled into a spread-eagled position with her back on the floor. Stevens could not find everything that he wanted to take and could not operate the cash register. He asked defendant what to do. Nancy Allen replied, directing Stevens to what he sought but this caused defendant to stab his helpless victim three more times in her chest. Two of these pierced the heart. She continued to speak, begging for her life. Defendant silenced her with four stabs into the neck, one of which opened the carotid artery.

As Nancy Allen's pierced heart oozed its life's blood into the opened cavities of her lungs and onto the floor, defendant and Stevens gathered up cash and merchandise and left the store. Defendant wiped fingerprints off the door handle before leaving. They stuffed the stolen items in the bag outside and left. Nancy Allen lay dying on the floor.

The pair met their compatriots at the hospital. They paired up and left in separate taxis for the Greyhound Bus Depot. They paired up again in a different combination and went to their common summer hangout, Sherwood Lake. The cash register coin tray was thrown into the lake and they burned the stolen checks. A week later defendant wanted Stevens to lure "some guys" into the lake area so he, the defendant, could kill them. This action was aborted when a police officer came into the area and defendant threw the murder knife into the lake.

Street talk led the Metropolitan Major Case Squad to the defendant and his companions, and they were picked up by police on August 10th. Before taking a statement, Detective Ron Nichola advised defendant of his rights. Defendant's mother, Lt. Dave Rogers, and a juvenile officer were also present. An extremely incriminating statement was taken. The certification for 16-year-old Heath Wilkins' trial as an adult was obtained on August 15, 1985 as required by Section 211.071, RSMo Supp.1984.

The litany of Fifth Amendment rights was read again to defendant at his arraignment in circuit court on October 17, 1985. Appointed counsel Fred Duchardt of the Clay County Public Defender's Office represented Wilkins and entered a plea of "not guilty by reason of mental disease or defect excluding responsibility" or "not guilty" to all the charges against defendant. A mental examination was ordered and the results from the Western Missouri Mental Health Center were filed with the court on December 19, 1985. Defense counsel sought an additional examination, which was obtained privately at the Minninger Clinic in Topeka, Kansas. The results of that examination became available in April of 1986.

A competency hearing was set for April 16th to inquire into the competency of the defendant at the time of his act as well as his present competency to stand trial. Unknown to the court but after long discussions with

attorney Duchardt, defendant reversed his position. Defendant wanted to release counsel and proceed *pro se*, plead guilty, waive jury trial, and actively seek a sentence of death as his penalty.¹ The trial court first became fully aware of this turn of events at the April 16th competency hearing. Dr. Steven A. Mandracchia examined the defendant on November 27, 1985 before knowing that defendant intended to seek the death penalty. However, Dr. Mandracchia's opinions about defendant's competency were unequivocal. He said "that there was no evidence of mental disease or defect as defined by chapter 552 of the revised statutes of the state of Missouri." Later, after being advised of the defendant's intention to seek the death penalty, his opinion did not change. "I don't feel that he has any psychological or intellectual or cognitive limitations on his capabilities."

Dr. William S. Logan, M.D., Director of Law and Psychiatry at the Menninger Foundation, examined the defendant in March 1986 after the defendant had made his fateful decision. Attorney Duchardt had fully advised Dr. Logan of Wilkins' intentions as did the examinee himself. Dr. Logan resisted giving the categoric competency opinion that Dr. Mandracchia had given. Nevertheless, he found that the defendant had average intelligence. Moreover, although he found that Wilkins suffered from some emotional disorders of long standing, Dr. Logan "didn't see [Wilkins] as meeting the criteria for a severe mental illness as defined under the statutes of Missouri." In fact, Dr. Logan characterized "the execu-

¹ This is not as novel as it might sound. See Urofsky, *A Right to Die: Termination of Appeal for Condemned Prisoners*, 75 J. of Crim.L. & Criminology 553, 553 (1984) (examining cases where convicted murders voluntarily terminated appeals that would have delayed their executions). "For some on death row, however, the darkest fear is not execution, but the prospect of living out their natural years incarcerated in a six-by-nine cell, under constant surveillance, with little or no hope of ever regaining their freedom." *Id.*

tion of the crime as very purposeful, very deliberate, very well planned . . . [with the defendant making] numerous efforts to avoid detection, showing that he appreciated the wrongfulness of it. . . ." After hearing this testimony and interrogating defendant, the court found defendant to be competent.

Despite the finding of defendant's competency, Judge McFarland did not immediately grant his motion to proceed *pro se*. The right to proceed without counsel upon a voluntary and intelligent election has been recognized by the Supreme Court of the United States. *Faretta v. California*, 422 U.S. 806, 807, 95 S.Ct. 2525, 2527, 45 L.Ed.2d 562 (1975). However, the *Faretta* court recognized the disadvantages to a defendant who proceeds *pro se*. *Id.* at 834-35, 95 S.Ct. at 2540-41. Here, the trial court found itself faced with a peculiar constitutional quandary—a defendant may not be convicted and imprisoned without being accorded the right to assistance of counsel but a defendant may help himself into a conviction by his voluntary albeit inadequate self-representation. *Id.* at 832-33, 95 S.Ct. at 2539-40.

Consequently, the circuit judge took steps to ensure that the gravity and importance of defendant's decision was brought home to him. Judge McFarland explained the advantages of counsel to defendant, highlighted defendant's own inadequacies of education, age, and experience, and set the *pro se* hearing off for another week to ensure that defendant gave additional thought to this matter.

When the hearing resumed on April 23, 1986, the judge strongly voiced his belief that defendant should be represented by an attorney. He explained each consequence of defendant's action: the waiver of trial by jury on each charge including both phases of the murder trial, the ranges of punishment, the necessity of written waivers, as well as a detailed and vivid description of the effects

of execution by poison gas. Finally, he set a pleading hearing for May 9th and admonished the defendant to talk to those whom he trusted and who could advise him about his chosen course.

On May 9th, the circuit court reconvened to consider defendant's desire to change his pleas to guilty and to waive trial. Again, the court persisted in its efforts to convince the defendant that the course was unwise. Again, the court advised him of the enormity and finality of his waivers of legal rights. Defendant politely but firmly rejected the court's advice. Judge McFarland explained that this course would probably lead the court to impose a death penalty. But, he explained that defendant might still get the life sentence. Finally, the court took evidence to substantiate a factual basis for the change of plea. At length, the court concluded that defendant understood the consequences of his actions and that defendant voluntarily and knowingly was waiving his rights and entering guilty pleas, and the court accepted the pleas of guilty to all the charges including murder in the first degree.

At the sentencing hearing on June 27, 1986, the court entered the maximum sentences on the two lesser charges. Judge McFarland again reviewed the variety of rights available to the defendant for the asking. Defendant declined again. The court offered him a chance even at this late stage to withdraw his plea.

The Court: You understand that I think it would be in your best interests that you withdraw your plea?

Defendant: "I understand what you think, your Honor."

Evidence was taken in the sentencing stage. It amply supports the guilt of the defendant. Heath A. Wilkins stood up at his last opportunity to address the circuit court and told the court, ". . . I'm asking the court to

consider the death penalty as a [sic] more humane in the extent of possible happenings and pain received by, you know, me. . . . One I fear, the other one I don't."

Judge McFarland entered his order.

The court does feel that the defendant's decision [to ask for death] was made rationally and after due thought and deliberation. . . . The court finds beyond reasonable doubt that the following aggravating circumstances exist: number one, the murder in the first degree was committed while the defendant was engaged in the perpetration of the felony of robbery; and, number two, the murder in the first degree involved depravity of mind and that as a result thereof it was outrageously-or wantonly vile, horrible or inhuman.

Section 565.032.2 subs. (11) and (7), RSMo Supp.1984 (respectively).

Counsel for defendant raise four major points and multiple sub-points in their brief. First, that the trial court erred in finding defendant competent to proceed because the evidence was inadequate and that the trial court failed to make specific findings on the defendant's competency to waive his constitutional rights.

Second, counsel argued that the circuit court failed to consider mitigation at the sentencing hearing as required by the decision of the Supreme Court of the United States and the Missouri sentencing statute. Counsel also contend in their second point that the trial court erred quantitatively in weighing the aggravating circumstances it had found against the mitigating circumstances it had found. The court did not find two other aggravating circumstances beyond a reasonable doubt that had been requested for consideration by the State: "The offender committed the offense of murder in the first degree for himself or another, for the purpose of receiving money or any other thing of monetary value from the victim

of the murder or another." Section 565.032.2(4). "The murdered individual was a witness or potential witness in any past or pending investigation or past or pending prosecution, and was killed as a result of his status as a witness or potential witness." Section 565.032.2(12).

Third, the death sentence should be set aside because it is comparatively disproportionate to the penalty imposed in similar cases.

Finally, counsel contends that the death penalty is cruel and unusual per the Eighth Amendment of the United States Constitution and Article I, Section 21 of the Missouri Constitution.

This Court has repeatedly rejected constitutional challenges to Missouri's death penalty provisions. *State v. Driscoll*, 711 S.W.2d 512, 517 (Mo. banc 1986) (list of citations). Similarly, the Supreme Court of the United States has held that the death penalty is not per se cruel and unusual punishment prohibited by the Eighth Amendment. *Gregg v. Georgia*, 428 U.S. 153, 188-95, 96 S.Ct. 2909, 2932-36, 49 L.Ed.2d 859 (1976) (plurality opinion). Recent decisions have not varied from that course. See *Project: Criminal Procedure*, 75 Geo.L.J. 1170 (1987). The point should be denied.

Counsel contends that the lower court's finding of defendant's competency was not supported by sufficient evidence; further that the trial judge failed to make a specific finding of defendant's ability to waive constitutional rights. In testing sufficiency, the reviewing court does not weigh the evidence but accepts as true all evidence and reasonable inferences that tend to support the finding. *State v. Brown*, 660 S.W.2d 694, 698-99 (Mo. banc 1983). This Court has observed the defendant, his demeanor, and listened to him, and the trial judge had over a period of months observed the defendant for prolonged sessions of hearings.

The psychological record is not sufficient as characterized by counsel but extensive and consists not only of the expert testimony but also the galaxy of tests, and records on which they relied, from the numerous institutions with which defendant had dealt. The basic test is whether mental illness renders the criminal defendant incompetent to stand trial because he "lacks capacity to understand the proceedings against him or to assist in his own defense." Section 552.020.3(1), RSMo Supp.1984; see *Winick, Restructuring Competency to Stand Trial*, 32 U.C.L.A. L.Rev. 921, 923 (1985). The overwhelming and uncontested evidence on this record establishes that defendant has met and continues to meet this basic test.

Counsel urge that there should be a heightened test of competency in this case. Although an incompetent, as a juvenile, may be impaired by his limited cognitive and social capacities, cf. *Winick, supra*, at 961 (discussing various situations in which a defendant may waive his incompetency status), Judge McFarland could not have been more unbiased, reasonable and fair in his consideration of competency. Any finding of competency necessarily entails the ability to waive certain rights beginning with the very first strains of *Miranda*. *Id.* at 961 (juveniles may validly waive both self-incrimination and right to counsel privileges). Moreover, and analogous to the threshold question of competency to stand trial, Missouri law presumes competency, as all persons are presumed to be free of mental disease or defect which would exclude their responsibility for their conduct. Section 552.030.7, RSMo Supp.1984. The point is denied.

In the second point it is contended that the trier failed to consider mitigation as required by state statute, Section 565.030.4 RSMo Supp.1984, and by *Eddings v. Oklahoma*, 455 U.S. 104, 110-14, 102 S.Ct. 869, 874-77, 71 L.Ed.2d 1 (1982). This claim is not supported by the record. The trial judge clearly indicates that he considered mitigating factors in addition to defendant's age

in the required trial report. Defendant was 16 years and seven months old when he murdered Nancy Allen. He was 17 years and four months old when he pleaded guilty. He had completed nine years of education and had an intelligence quotient of 105.²

The report of the trial judge shows that he considered whether the murder "was committed while the defendant was under the influence of extreme mental or emotional disturbance." Section 565.032.3(2), RSMo Supp.1984. Second, he considered whether "[t]he capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired." Section 565.032.3(6).

Counsel suggest that the weighing of mitigating factors is a quantitative or tallying process. Clearly it is not. For example, the trier must assess the punishment in a capital murder case at life imprisonment "[i]f the trier finds the existence of one or more mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found by the trier." Section 565.030.4(3), RSMo Supp.1984. Just one mitigating factor might permissibly outweigh several aggravating circumstances under this provision and require the imposition of only life imprisonment and not the death penalty. But the reverse is also true. The trier may find that a single aggravating circumstance beyond a

reasonable doubt "warrant[s] imposing the death sentence." Section 565.030.4(2). The trier's judgment as to the appropriateness of the sentence must be guided but is still discretionary. The weighing process is a qualitative one not a quantitative one. The trial court considered all the mitigating circumstances fairly presented by the evidence and did not find that they outweighed the aggravating circumstances found beyond a reasonable doubt. The point is denied.

Counsel in point three ask us to do no more than what this Court is mandated to do. Section 565.035, RSMo Supp. 1984. The court must review whether the imposition of the death penalty was influenced by passion or prejudice, was supported by evidence of the statutory aggravating factors enumerated by the trier of fact, or was disproportionate or excessive when compared to similar cases. *See State v. Battle*, 661 S.W.2d 487, 493-95 (Mo. banc 1983), *cert. denied*, 466 U.S. 993, 104 S.Ct. 2375, 80 L.Ed.2d 847 (1984).

The record bears no suggestion of prejudice, passion or any other arbitrary factor. The trial court's patience and fairplay were well-demonstrated throughout. Similarly, the evidence supports his finding that defendant Wilkins committed the murder of Nancy Allen in a wantonly vile, horrible and inhuman manner. With cool, deliberate premeditation he remorselessly executed the prone, helpless Nancy Allen, who had ample time to consider her demise, her husband, and her one-year-old and three-year-old girls. Defendant brutally silenced her pleas for mercy. The defendant freely admits that he committed this murder during a robbery, which supports the other aggravating circumstance found by the trier. The death penalty was not influenced by passion or prejudice and the evidence supports the trial court's finding of two aggravating circumstances beyond a reasonable doubt.

² See: *Burger v. Kemp*, — U.S. —, 107 S.Ct. 3114, 97 L.Ed.2d 638 (1987) and dissenting opinion of Powell, J., at 5143. Issue was alleged ineffective assistance of counsel. Defendant was 17-years-old at time of murder, had an I.Q. of 82, functioned at a 12-year-old level, and had possible brain damage from beatings when he was child.

Thompson v. State, 724 P.2d 780 (Okla.Crim.App. 1986) (defendant 15-years-old at time of murders), *cert. granted*, — U.S. —, 107 S.Ct. 1284-85, 94 L.Ed.2d 143 (1987), to consider whether Eighth Amendment imposes an age limitation on the application of the death penalty.

Finally, we are required to consider whether this sentence of death is disproportionate to the penalty imposed in similar cases considering both the circumstances of the crime and the defendant. *State v. Foster*, 700 S.W.2d 440, 445 (Mo. banc 1985), *cert. denied*, — U.S. —, 106 S.Ct. 2907, 90 L.Ed.2d 993 (1986). The cases the Court has reviewed demonstrate the penalty of death imposed here is not excessive or disproportionate to similar cases.

In *State v. Foster*, 700 S.W.2d 440, 441 (Mo. banc 1985), defendant, with an accomplice, planned an armed robbery of the apartment of two acquaintances. The jury in *Foster* found four aggravating circumstances including two which are essentially identical to those found in the instant case—a murder involving depravity and a murder for gain. Death was imposed. *Id.* at 445.

In *State v. Lashley*, 667 S.W.2d 712, 716 (Mo. banc), *cert. denied*, 469 U.S. 873, 105 S.Ct. 229, 83 L.Ed.2d 158 (1984), defendant was 17 years and one month old at the commission of the murder. Defendant with the intention of robbing the victim had stabbed the victim who did not die at the instant of attack. Lashley had been committed to various institutions and was considered to be of average intelligence. The death penalty was imposed.

In *State v. Newlon*, 627 S.W.2d 606, 609-10 (Mo. banc), *cert. denied*, 459 U.S. 884, 103 S.Ct. 185, 74 L.Ed.2d 149 (1982), an armed defendant entered a store with his accomplice after waiting for customers to leave so that the lone attendant would be isolated. Defendant entered knowing that the attendant might be killed after an accomplice's remark before they entered the store. The trier found that the murder was wantonly vile. *Id.* 627 S.W.2d at 621. The death penalty was imposed.

See also *State v. Johns*, 679 S.W.2d 253 (Mo. banc 1984), *cert. denied*, 470 U.S. 1034, 105 S.Ct. 1413, 84

L.Ed.2d 796 (1985); *State v. Byrd*, 676 S.W.2d 494 (Mo. banc 1984), *cert. denied*, 469 U.S. 1230, 105 S.Ct. 1233, 84 L.Ed.2d 370 (1985); and *State v. Malone*, 694 S.W.2d 723 (Mo. banc 1985), *cert. denied*, — U.S. —, 106 S.Ct. 2292, 90 L.Ed.2d 733 (1986).

Aside from the general principles of deterrence, defendant's execution-murder of Nancy Allen is exceptional in its brutality. Unlike any of the cited cases except *Newlon*, the evidence herein demonstrates an *express pre-existing plan* on defendant's part to kill anyone and everyone he found at Linda's Liquors and Deli to eliminate potential witnesses. This was no spur of the moment decision on defendant's part, but planned. Although the victim in this case was immediately assaulted when the robbery began, she had a substantial time in which to anticipate her fate and to plead for her life. Cf. *State v. Newlon*, 627 S.W.2d at 622. The suffering of the victim is certainly a factor in comparing this with other cases. *State v. Smith*, 649 S.W.2d 417, 434-35 (Mo. banc), *cert. denied*, 464 U.S. 908, 104 S.Ct. 262, 78 L.Ed.2d 246 (1983). Even after inflicting a mortal wound upon Nancy Allen, defendant was not content to let her die. He inflicted further mutilation upon her by stabbing her repeatedly in the throat to stop her from talking. Cf. *State v. Johns*, 679 S.W.2d at 257; and *State v. Malone*, 694 S.W.2d at 724. As all of these facts demonstrate, the murder at bar is substantially more heinous than past killings which have been found to justify a sentence of death.

Another factor supporting defendant's sentence, newly recognized in Missouri's 1984 revision of the homicide statutes, is the strength of the evidence against him. Section 565.035.3(3). Heinous murders have been committed in the past in which the evidence of the crime was circumstantial and the precise role of the accused in the killing was unclear; in such cases, an inference exists that the jury may have rejected a sentence of death for

that reason. *See, e.g., State v. Turner*, 623 S.W.2d 4, 6-7 (Mo. banc 1981), cert. denied, 456 U.S. 931, 102 S.Ct. 1982, 72 L.Ed.2d 448 (1982); and *State v. Mitchell*, 611 S.W.2d 223, 224-25 (Mo. banc 1981). Such is not the case here. Defendant has admitted and described in great detail his dominant role in the killing of Nancy Allen from his planning of the murder in advance to his stabbing the victim to death, and his account is corroborated by autopsy evidence and the crime scene. By definition, the evidence of defendant's guilt could not be any greater than it is in a plea of guilty.

The final and a most chilling factor to be considered is the nature of defendant himself and his attitude toward human life. In his words, Nancy Allen was a "trash can" whose most convenient disposition was to be killed so she would not be "a bother" to defendant in the future. As evidenced by his actions, this statement by defendant is not mere bravado because he had made a prior and unconditional decision to kill the witnesses to his planned robberies and he had no reason to kill Nancy Allen other than the possibility that she might later testify against him. This was only one of a series of robberies and murders that defendant had intended to commit had he not been apprehended, and he had made attempts to kill people, including his mother, both before and after the Nancy Allen murder. There can be no doubt that, given defendant's attitude, he will unhesitatingly kill anyone who "gets in his way" unless and until he is prevented from doing so by the forces of civilized society. The sentence of death imposed upon defendant is the only reliable means of achieving that aim.

The judgment is affirmed.

ROBERTSON, RENDLEN and HIGGINS, JJ., concur; BLACKMAR, J., dissents in separate opinion filed; DONNELLY, J., dissents in separate opinion filed; WELLIVER, J., dissents in separate opinion filed and concurs in dissenting opinions of BLACKMAR and DONNELLY, JJ.

BLACKMAR, Judge, dissenting.

For the reasons assigned by Judge Billings the points raised by appointed counsel are without substance. The trial judge is to be commended for his fair and balanced handling of a very difficult situation.

Judge Billings expounds the deliberateness and atrocity of the killing. Judge Donnelly, in his dissenting opinion, demonstrates the vagaries in jury sentencing, describing killings which are no less repulsive, but in which the jury did not assess the death penalty. He senses a tendency to assess life rather than death when the offender is very young. I cannot add to the meticulous scholarship of both of my brethren.

Section 565.035.2, RSMo 1986, effective 10-1-84, directs us to "consider the punishment. . . ." Pursuant to this obligation, I would hold that a defendant who was a juvenile at the time of the offense should not be subject to the death penalty. In *State v. Battle*, 661 S.W.2d 487, 495 (Mo. banc 1983) and *State v. Lashley*, 667 S.W.2d 712, 717 (Mo. banc 1984), I argued unsuccessfully against death sentences for minors. I would draw a line at the juvenile level. Lines must be drawn somewhere; the offender below fourteen may not be punished as a criminal. *See Section 211.071, RSMo 1986.* The death sentence should be reserved for those capable of *mature* deliberation. *See* Ellison, "State Execution of Juveniles: Defining "Youth" as a Mitigating Factor for Imposing a Sentence of Less than Death. 11 Law and Psychology Review 1 (Spring, 1987).

It is suggested that my position is contrary to state policy as defined by the legislature, inasmuch as the statutes contain no prohibition on the execution of persons who were juveniles at the time of commission of the offense. I believe that the duties imposed on us by Section 565.035.2 authorize us to adopt some objective standards for imposition of the death penalty. I also submit that our duties under that section are in addition to the duty of comparison imposed by 565.035.3, and that we should undertake a broader review of death sentences than we have in the past.

I concur with Judge Donnelly as to the remaining issues discussed in his dissenting opinion.

DONNELLY, Judge, dissenting.

Mandatory review under section 565.035, RSMo 1986.¹

In this case, defendant entered pleas of guilty and expressed a desire to be put to death. The Court conducts its mandatory review, § 565.035, RSMo 1986, of a sentence of death, imposed following a hearing to determine punishment, § 565.032.2, RSMo Cum.Supp.1983. For reasons stated, we reduce sentence to life imprisonment without possibility of probation or parole, barring executive act.

The facts are undisputed, drawn from defendant's statements to a police investigator and to the trial court during the sentencing phase, from reports and testimony of psychiatrists who examined defendant, and from the report of a presentence investigator. On the night of the

¹ Defendant filed no after-trial motions or notice of appeal in this case. Counsel appointed to represent defendant in proceedings before this Court have briefed and argued numerous points of law. We decline to review these at this time, given our disposition of the case. We intend no suggestion as to the merit of counsel's claims which may be grounds for post-conviction relief under Rule 27.26; defendant may pursue such relief at his option.

fatal stabbing of Nancy Allen, defendant Wilkins was aged sixteen years, six months, twenty days. For about a month previous, he had been living on the streets of Kansas City with three other juveniles, Pat "Bo" Stevens, Roy "Shades" Thompson, and Marjorie "Midget" Filipiak. At Wilkins' initial suggestion, the foursome plotted to rob area businesses. Defendant proposed, and the group acceded to, Linda's Liquor & Deli in Avondale as an initial target. Wilkins maintained he would kill anyone present to conceal the perpetrators' identities. To facilitate his claimed objective, Wilkins purchased a narrow-bladed, martial arts knife from Stevens with money defendant had stolen from a laundromat.

As preconceived one to two weeks before, an intricate plan unfolded July 27, 1985. At or near 10:15 p.m., the four juveniles met at North Kansas City Hospital. Defendant and Stevens walked through a wooded area to the nearby deli, leaving Filipiak and Thompson at the hospital to await their return. The two boys stalked the target from along a neighboring creek while customers transacted business in the store and left. It was nearing closing time. Around 11:00 or 11:30 p.m., toting a change of clothes apiece in defendant's handbag, the two youths executed the crime. The handbag was left outside the deli to avert suspicion; both boys wiped mud from their shoes to avoid leaving footprints inside. Nancy Allen, the store clerk, was alone, seated behind the counter, when the boys entered. Wilkins ordered a sandwich. Stevens asked to use the restroom. When Stevens exited, he grabbed the victim, holding her while Wilkins rushed forward, produced the knife, and stabbed her in an area of her back he thought to be her kidney. Allen fell to the floor. Lying on her back, the victim responded to a question Stevens put to her, and began pleading with defendant not to kill her. Wilkins told Allen to be quiet, then stabbed her repeatedly in the chest and throat areas. Expert medical testimony indi-

cated Mrs. Allen probably was deceased before Wilkins imparted the last wound to her body.

Stevens pilfered cash, checks, liquor, cigarettes and rolling papers from the cash register and store displays. Roughly \$450.00 in cash and checks were taken. Stevens then "freaked out," and defendant had to push him out the door. Wilkins wiped Stevens' fingerprints from the doorknob before the pair made their immediate flight.

Defendant and Stevens rendezvoused with Filipiak and Thompson at the hospital. To evade any pursuit, the foursome left the hospital in cabs Filipiak summoned from two local cab companies. The juveniles rode in pairs to a Kansas City bus depot. There, they talked a while, divided the stolen cash, and the principals changed clothes. Stevens and Thompson left, again in a cab. Wilkins and Filipiak lagged behind about an hour to play video games, then left by the same means. The four met back at the lake area they frequented in Penguin Park and "tripped out." They used the stolen checks to start a fire. Defendant used his share of the money to buy drugs.

About a week later, Wilkins encouraged Stevens to lure "some guys" into the lake area so defendant could kill them. This plan was aborted when a patrolling police officer happened into the area. Wilkins threw his knife into the lake to avoid discovery. The weapon never was found.

Defendant was arrested August 10, 1985. He acquiesced to giving a statement, in which he admitted to and described in detail the deli store murder.

As indicated above, this case comes to the Court in a peculiar posture. Wilkins was certified to be tried as an adult and was appointed counsel, Mr. Frederick Duchardt. In late January or early February 1986, Wilkins informed Duchardt that he wished to withdraw an earlier plea, not guilty and not guilty by reason of

mental disease or defect, and substitute pleas of guilty to all charges.² Defendant also expressed a desire to seek the death penalty as his punishment. Counsel refused to aid Wilkins in this sordid goal.

Two psychiatrists and a clinical psychologist investigated defendant's competence to stand trial through interviews and testing. On considering the psychiatrists' testimony at an April 16, 1986, hearing, the trial court found Wilkins competent to proceed. Wilkins immediately moved, *pro se*, to represent himself before the court. One week later, the court accepted defendant's written waiver of counsel.³ Mr. Duchardt was discharged from representation, but the court ordered him to remain available to answer any legal questions defendant might have.⁴

Wilkins immediately announced his desire to enter guilty pleas to all charges. The court attempted to dissuade him, to the point of describing how lethal-gas executions were performed. Defendant was encouraged to "talk to other people about this decision you're having to make," and the cause was continued until May 9, 1986. Wilkins persisted. When the case was resumed, he offered written petitions to enter the desired pleas. After extensive questioning, during which the trial judge offered defendant every opportunity to change his mind, the pleas were accepted as to each count. Sentencing was scheduled for June 27.⁵

² Wilkins was charged with first degree murder, § 565.020.2, RSMo 1986; armed criminal action, § 571.015, RSMo 1986; and unlawful use of a weapon, § 571.030.1, RSMo 1986.

³ The court constantly reminded defendant of the wisdom of professional representation throughout these proceedings.

⁴ The Court commends Mr. Duchardt's service to the court below, under what undoubtedly were frustrating circumstances.

⁵ Indicative of the leeway the trial judge afforded Wilkins, the court informed that in the interim it would consider any change of heart Wilkins entertained reference his plea to the murder charge. Defendant remained firm in his intention.

Wilkins was given maximum sentences for the lesser offenses: five years' imprisonment for unlawful use of a weapon, life imprisonment for armed criminal action. The court then considered evidence on the appropriate sentence for Nancy Allen's murder.⁶ In a bizarre climax to the proceedings, both prosecutor and defendant urged the ultimate sanction. Defendant realized his goal—the court passed a sentence of death. Supporting the sentence imposed, it found as aggravating circumstances that: 1) Defendant was engaged in perpetrating a felony (robbery) when the murder was committed, § 565.032.2(11); 2) The murder was outrageously or wantonly vile, horrible or inhuman, since it reflected depravity of mind, § 565.032.2(7).

Neither the record nor counsel suggest the sentence imposed reflects the least hint of passion, prejudice or arbitrariness. § 565.035.3(1), RSMo 1986. Moreover, the record supports the court's conclusions under section 565.032.2(7) & (11), RSMo 1986. We turn, therefore, to the dispositive question, "whether the sentence of death was excessive or disproportionate to the penalty imposed in similar cases, considering both the crime, the strength of the evidence and the defendant." § 565.035.3(3), RS Mo 1986. *Under the facts of this case*, in light of Wilkin's age as of the offense, his prolific abuse of drugs and alcohol, and his long history of mental and emotional affliction, we hold the sentence excessive and disproportionate, and reduce that sentence to one of life imprisonment without possibility of probation or parole, barring executive clemency. § 565.035.5(2), RSMo 1986.

Relevant cases for a review of the appropriateness of the sentence are those in which the judge or jury first found the defendant guilty of capital murder and thereafter chose between death or life imprison-

⁶ Defendant waived trial by jury for the penalty phase of his murder trial. See § 565.030.4, RSMo 1986.

ment without the possibility of parole for at least fifty years.

State v. Bolder, 635 S.W.2d 673, 685 (Mo. banc 1982), cert. denied, 459 U.S. 1137, 103 S.Ct. 770, 74 L.Ed.2d 983 (1984).

First, we consider defendant's age. In four capital cases involving youths of comparable age, a life sentence was imposed. *State v. Greathouse*, 627 S.W.2d 592 (Mo. 1982) (defendant age seventeen); *State v. Allen*, 710 S.W.2d 912 (Mo.App.1986) (defendant age sixteen); *State v. White*, 694 S.W.2d 802 (Mo.App.1985) (defendant age seventeen); *State v. Scott*, 651 S.W.2d 199 (Mo.App.1983) (defendant age sixteen). Only one Missouri youth has been sentenced to die who was seventeen years old or younger as of his crime. *State v. Lashley*, 667 S.W.2d 712 (Mo. banc), cert. denied, 469 U.S. 873, 105 S.Ct. 229, 83 L.Ed.2d 158 (1984).

In *Greathouse*, *Allen*, *White*, and *Scott*, the jury was instructed on defendants' lack of prior criminal activity as a mitigating factor reference sentence. In this sense, the case *sub judice* is distinct.⁷ But the jury was similarly instructed in *State v. Battle*, 661 S.W.2d 487 (Mo. banc 1983), cert. denied, 466 U.S. 993, 104 S.Ct. 2375, 80 L.Ed.2d 847 (1984) (defendant aged eighteen years, four months; no significant history of criminal activity; death sentence affirmed), and *State v. Blair*, 638 S.W.2d 739 (Mo. banc 1982), cert. denied, 459 U.S. 1188, 103 S.Ct. 838, 74 L.Ed.2d 1030, reh'g denied, 459 U.S. 1229, 103 S.Ct. 1240, 75 L.Ed.2d 472 (1983) (defendant eighteen; same history and sentence). As to this age group of offenders, then, the absence, and thus presence, of a significant history of criminal acts may be an unreliable

⁷ Wilkins, from an early age, engaged in arsons, burglaries, and steading. These activities were before the court for its consideration during sentencing, embodied in Wilkins' juvenile records. § 211.321.1, RSMo 1986.

predicate for proportionality review. As to *this age group* of offenders, perhaps the most to be said is that age as a mitigating factor, § 565.030.3(7), RSMo 1986, *standing alone*, is insufficient to overturn a death sentence, on grounds the penalty is excessive or disproportionate, once the trier of fact has passed such sentence. *State v. Lashley*, 667 S.W.2d 712 (Mo. banc), *cert. denied*, 469 U.S. 873, 105 S.Ct. 229, 83 L.Ed.2d 158 (1984); *State v. Battle*, 661 S.W.2d at 494-95.⁸

Next, we look to cases in which death was imposed on a young offender and make comparison based on the nature of the killing. In *State v. Battle*, 661 S.W.2d 487 (Mo. banc 1983), *cert. denied*, 463 U.S. 993, 104 S.Ct. 2375, 80 L.Ed.2d 847 (1984), defendant, eighteen, stabbed an eighty-year old woman with a twelve-inch butcher knife. The mortal wound was inflicted just below the victim's left eye. The elderly woman, "naked, beaten and ravished," suffered nearly three hours before she died. The jury recommended the death penalty, after being instructed only on the "vile, horrible or inhuman" nature of the killing as an aggravating circumstance. *See* § 565.032.2(7), RSMo 1986. *Battle* is different from this case. Nancy Allen was not sexually abused before or after the murder, *compare State v. White*, 694 S.W.2d 802 (Mo.App.1985) (indications victim may have been sexually molested after death; defendant seventeen, received life sentence), *with sub judice and Battle*; and, no evidence indicated Mrs. Allen suffered for any prolonged period after Wilkins attacked her. Indeed, the coroner indicated she may have been dead by the time defendant

⁸ Counsel invite the Court to consider whether sentencing a minor to die constitutes a *per se* violation of the Eighth Amendment of the Federal Constitution. We decline. *Battle* and *Lashley* state the law in Missouri barring contrary adjudication in the United States Supreme Court. *See Thompson v. Oklahoma*, — U.S. —, 107 S.Ct. 1284, 94 L.Ed.2d 143, *cert. granted*, — U.S. —, 107 S.Ct. 1284-85, 94 L.Ed.2d 143 (1987).

imparted the last wound. Certainly this killing, however senseless, was no more repulsive than those involved in *State v. Beck*, 687 S.W.2d 155 (Mo. banc 1985), *cert. denied*, — U.S. —, 106 S.Ct. 2245, 90 L.Ed.2d 692 (1986) (nineteen-year old shot and killed elderly couple; life sentence); *State v. Greathouse*, 627 S.W.2d 592 (Mo. 1982) (seventeen-year old struck uncle with ax, then shot him eight times; life sentence); *State v. Baskerville*, 616 S.W.2d 839 (Mo.1982) (nineteen-year old; triple-murder, life sentence); *State v. Allen*, 710 S.W.2d 912 (Mo.App. 1986) (sixteen-year old, given life imprisonment; insisted after robbing couple, aged 67 and 68, that they be killed "the way Muslims kill people—by tying 'their ankles [?] to their feet'", laying each on stomach, then stabbing each in back of neck); *State v. Hurt*, 668 S.W.2d 206 (Mo.App.1984) (nineteen-year old, penitentiary inmate, killed cellmate by stabbing him more than sixty times; life term imposed); *State v. Scott*, 651 S.W.2d 199 (Mo.App.1983) (sixteen-year old; life imprisonment; robbed elderly couple at gunpoint, then stabbed wife twenty-two times; husband, also stabbed multiple times, survived).

In *State v. Lashley*, 678 S.W.2d 712 (Mo. banc), *cert. denied*, 469 U.S. 873, 105 S.Ct. 229, 83 L.Ed.2d 158 (1984), the victim was stabbed in an area of her head where a section of skull had been surgically removed, exposing a soft spot." Defendant was "seventeen years and one month old" as of the killing. His motive was to rob his fifty-five-year old, handicapped cousin; he did so in a manner described as "classic lying in wait." *Id.* 678 S.W.2d at 716. Wilkins' crime fits this genre. *See* § 565.032.2(4), RSMo 1986. But more is involved here, making *Lashley* distinct.⁹ In none of the above, *Lashley*,

⁹ We also note "the issue . . . is not whether any similar case can be found in which the jury imposed a [death] sentence, but whether the death sentence is excessive or disproportionate in light of similar cases' as a whole." *State v. Mallett*, 732 S.W.2d 527, 542 (Mo. banc 1987).

Battle, Blair, Beck, Greathouse, Baskerville, Allen, Scott, Hurt, or White, was the nature of the defendant such as to raise serious question, as here, whether the defendant should be held so completely responsible for his conduct that we should affirm his sentence.¹⁰

At age ten, Wilkins was referred to Tri-County Mental Health Center. For the next four to five years, excepting a seven-month probationary period at home, defendant underwent evaluation, treatment and detention at various Missouri institutions. He was diagnosed as possessing a borderline personality, schizotypal personality, and perhaps developing schizophrenia.¹¹ He was withdrawn, isolated, depressed, impulsive, displaying intermittent episodes of paranoid functioning. On at least two occasions, he was prescribed anti-psychotic medication. Officials at Crittenton Center expressed concern that defendant was at risk for violent, destructive, or self-destructive acts.¹² Indeed, Wilkins had on a number of occasions attempted suicide by cutting his wrist, overdosing on medication or illegal drugs, and leaping from a bridge into the path of a passing car.

Dr. Logan, who examined defendant to determine his competence to proceed below, intimated that Wilkins'

¹⁰ We do not ignore the carefully-planned and carefully-executed nature of this heinous offense. Nor do we take lightly defendant's apparent disregard for the lives of others. We find only that Wilkins' age, his mental and emotional instability, and extensive drug use coagulate, inseparably, to quicken the conclusion, in our view the only conclusion, that the ultimate price is an excessive one to be levied on this defendant.

¹¹ Wilkins' brother was diagnosed a schizophrenic in 1982. His father was committed for a period of time in an Arkansas mental facility. On these bases, one examining psychiatrist suggested defendant's dysfunctioning may have a genetic component.

¹² Examining psychiatrist William Logan indicated these actions were intimately bound with defendant's disorder.

heavy drug use was tied to his cognitive functioning.¹³ Dr. Parwatikar, who interviewed Wilkins at this Court's instance to determine his competency to waive appellate counsel, suggested defendant's youth, in turn, was a feature which distinguished his mental and emotional make-up from a mere antisocial condition.

Dr. Logan testified below that Wilkins "suffered from an ongoing emotional disturbance" of "profound" proportion; he reported that defendant's actions on July 27, 1985, could not be divorced from his psychopathology. Even though Wilkins' condition could not be termed a legally recognized mental disease or defect, Chapter 552 RSMo 1986, Logan submitted in his report that:

This is not to say that defendant did not suffer from significant impairment in his mental functioning as a result of mental disease which at the time of the crime hindered his emotional realization of the nature, quality, and wrongfulness of his conduct, and hindered his cognitive control of his conduct . . .

On these facts, considering defendant's age, and his significant cognitive-emotional disorder, and connected, extensive drug abuse, we hold the sentence excessive and disproportionate. Consistent with this holding, we reduce Wilkins' sentence to life imprisonment without possibility of probation or parole barring executive act.¹⁴

¹³ Defendant had used marijuana since he was five. He had abused inhalants, stimulants and depressants since age six. In the three summers prior to 1981, he estimated he had inhaled gasoline fumes on about 500 occasions. Since at least age ten or eleven, Wilkins had used LSD, by admission his favorite drug. On July 27, 1985, defendant ingested a home-made strain of the drug three times, the last at around 1:30 p.m. We find this drug use significant only to the extent it was a product of Wilkins' disorder, and to the extent it lends greater force to our conclusion, considered *in tandem* with the other factors we find persuasive in reducing sentence.

¹⁴ Defendant's desire to obtain the death penalty is noteworthy only in that we find it impertinent to this or any review under

After argument and submission, this cause was assigned to me for opinion. That opinion, which is set forth above, was rejected by the majority of the Court.

I respectfully dissent.

WELLIVER, Judge, dissenting.

I respectfully dissent. The principal opinion treats this case as though it were here on appeal, which it is not, and in my opinion, glosses over our statutory duty to make examination as to proportionality of the sentence. § 565.035.3(3), RSMo 1986. I concur in the separate dissenting opinion of Blackmar, J. and the separate dissenting opinion of Donnelly, J.

The record before us is a documentary of defendant-“appellant’s” exposure to and his failure to respond to almost every known social program of this society during the first almost seventeen years of his life. Regardless of the current belief of many that the death penalty is a deterrent to crime, utilization of the death penalty in cases such as this only serves to bury and cover up the failures of our existing social and penal programs. The death penalty was never intended to punish crimes committed by juveniles and is totally disproportionate to the punishment of similar crimes committed by those of similar age. See cases cited in separate opinions of Donnelly, J. and Blackmar, J. The punishment should be reduced to life imprisonment.

CLERK OF THE SUPREME COURT

State of Missouri
Post Office Box 150
Jefferson City, Missouri
65102

October 13, 1987

Ms. Janet M. Thompson
Ms. Nancy A. McKerrow
Office of State Public Defender
209B East Green Meadows Road
Columbia, Missouri 65203

Re: State of Missouri vs. Heath A. Wilkins,
No. 68393

Dear Ms. Thompson and Ms. McKerrow:

This is to advise that the Court has this day entered the following order in the above-entitled cause:

“Appellant’s motion for rehearing overruled. Execution set for December 17, 1987.”

Very truly yours,

/s/ Thomas [Illegible]
Clerk

cc: Attorney General

SUPREME COURT OF THE UNITED STATES

No. 87-6026

HEATH A. WILKINS,
Petitioner
v.

MISSOURI

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF MISSOURI

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, limited to Question 1 presented by the petition. The case is set for oral argument in tandem with No. 87-5666, *Jose Martinez High v. Walter Zant, Warden*.

June 30, 1988